



REPUBLIC OF KENYA



KENYA LAW
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**Muema v Republic (Criminal Miscellaneous Application E048 of 2024)
[2025] KEHC 14451 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 14451 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL MISCELLANEOUS APPLICATION E048 OF 2024**

**NIO ADAGI, J
SEPTEMBER 25, 2025**

BETWEEN

ONESMUS MUSYOKI MUEMA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Introduction

1. This ruling is on the applicant's Notice of Motion application dated 30th April 2024 and supported by the applicant's supporting affidavit sworn on the even date. The applicant seeks for orders that:-
 - a. Spent
 - b. That this Honourable Court be pleased to revise the life sentence into a definite sentence which is proportionate.
 - c. That this Honourable Court be pleased to consider the period spent in custody before his conviction.
2. The application is based on the grounds that:-
 - a. That the applicant was initially arraigned in Court on a charge of Defilement Contrary to Section 8 (1) as read with Sub-Section (2) of the *Sexual Offences Act* No. 3 of 2006—whereby he was found guilty of the charge and consequently convicted to serve a Life Sentence on the 26th of June, 2012 in Criminal Case No. 5 of 2010; at Tawa SRM'S Courts by Honorable J. W. Gichimu, SRM. He has been in incarceration since then up-to-date.
 - b. That the meek applicant sent an appeal at the High Court at Machakos which was dismissed on the 16TH day of December, 2014 in HCCRA No. 132 of 2012 by Hon. L. N, Mutende,



(LJ). He thereafter sent a second appeal to Nairobi Court of Appeal (Criminal Appeal No. 104 of 2021) which was heard and dismissed on 4th day of August, 2023 by Honorable Justices A. K. Murgor, S. Ole Kantai and M. Gachoka (CIArb,FCI Arb).

- c. That the Applicant was apprehended on 12/ 12/2010 up to date which amounts to more than thirteen (13) years behind bars.

Brief Facts of the case

3. The Applicant was charged with the offence of defilement contrary to Section 8 (1) as read with section (2) of the *Sexual Offences Act* No. 3 of 2006 in Sexual Offence Case No. 005 of 2010 at Tawa SRM's courts. The matter was set for hearing and the Applicant was convicted and sentenced to life imprisonment on 26/06/2012.
4. Being dissatisfied with the judgement and sentence, the Applicant appealed to the High Court in Machakos in Criminal Appeal No 132 of 2012. Being a court of 1st appeal, the learned judge re-examined and re-evaluated the case and the lower court record. The learned judge Judge L. N. Mutende dismissed the Applicant's appeal in entirety on 16th December 2014.
5. Being dissatisfied with the High Court judgment, the Applicant made a second appeal to the Court of Appeal at Nairobi in Criminal Appeal No. 104 of 2021. The court of appeal judges dismissed the appeal on 4th August 2023.
6. The Applicant has now filed the instant application seeking for revision of his life sentence into a definite sentence which is proportionate based on the grounds of the application and his supporting affidavit thereto.
7. The Respondent is opposed to the instant application and submits that the High Court and the Court of Appeal fully analysed the evidence of the prosecution case and rightfully concluded that the prosecution proved its case beyond reasonable doubt and the Applicant was rightfully convicted.

Analysis and Determination

8. I have carefully considered the application and the Parties' submissions filed in advancing their respective arguments on the same. The only issue for my determination is whether the application is merited.
9. Relying on the principle of "stare decisis", this court is bound by the judgment of the Court of Appeal and thus has no jurisdiction as regards the conviction and sentence of the Applicant in this matter.
10. The Supreme Court in *Petition No. E002 of 2024 Republic vs Evans Nyamari Ayako* stated that:

“This Court has underscored the importance, fidelity and centrality of respecting and observing the doctrine of stare decisis. It serves as a reference point, and ensures that there is consistency, certainty and predictability in the administration of the law which in turn, enhances confidence in the justice system. Stare decisis sets the baseline of how people conduct their everyday affairs and how they transact with the State”
11. The Applicant also relies on the decision in *Francis Karioko Muruatetu and Others V. Republic. Petition 15 & 16 of 2015* stating that the mandatory nature of sentences was declared unconstitutional. The Applicant has to be informed that the Supreme Court has since clarified that the Muruatetu case does not apply to all other cases including defilement cases but to murder cases only.



12. According to this court, the Applicant has exhausted his Right of Appeal in the High Court and Court of Appeal. The two appellate courts fully analysed the evidence of the prosecution case and rightfully concluded that the prosecution proved its case beyond reasonable doubt proving all the ingredients of defilement. To review the Applicant's sentence, as urged would be tantamount to sitting on appeal against a sentence of a court of higher jurisdiction and that is not permissible under the law.
13. The Applicant cannot come back to this court for review because this court is functus officio. If he has any grievances, he can only move the Supreme Court or petition for the President's Power of Mercy under Article 133 of *the Constitution* and the *Power of Mercy Act* as indeed the Advisory Committee established to advise the President in exercise of that function has power to consider the grounds raised by the Applicant – See section 22 of the *Power of Mercy Act*.
14. For the above reason's the application for review is unmerited and declined.
15. Orders accordingly. File closed.

RULING WRITTEN, SIGNED & DATED AT MACHAKOS THIS 25TH SEPTEMBER 2025

NOEL I. ADAGI

JUDGE

DELIVERED VIRTUALLY ON TEAMS AT MACHAKOS THIS 25TH SEPTEMBER 2025

In the presence of :

In person..... for Applicant

Ms. Agatha..... for Respondent

MillyGrace..... Court Assistant

