



**Luvi v Republic (Miscellaneous Criminal Application E229 of 2024)
[2025] KEHC 14470 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14470 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E229 OF 2024**

WM KAGENDO., J

OCTOBER 9, 2025

BETWEEN

SAID ZUMA LUVI APPLICANT

AND

REPUBLIC RESPONDENT

*(Originating from Sexual Offence Criminal Case NO.76 of 2020 of the
CM'S Court at Mombasa & HCCR Appeal No. E051 of 2021 at Mombasa)*

RULING

1. This application stems from a case of defilement contrary to section 8(1) as read with 8(2) of the *sexual offences act* no. 3 of 2006, where the applicant was tried and a sentence of 50 years was imposed on 30th June 2021 by Hon. R.M Amwayi (SRM).
2. After the conviction and sentence was pronounced He made his way to the high court on an appeal in high court Criminal appeal no E051 of 2021 and the sentence was reduced to 30 years imprisonment.
3. The current request is premised on the severity of the sentence and he relied on the case of Ali Abdallah Mwanza vs Rep (2018) EKLR where the sentence of 40 was held to be manifestly excessive.
4. In this case I note the sentence had been reviewed from 50 years to 30 years. Therefore, the issue of sentence has been dealt with exhaustively. This Court does not have jurisdiction to further review the sentence. The applicant seeks to have this Court sit on appeal over a decision made by a court of concurrent jurisdiction.



5. This application is an abuse of the court process and should not be allowed. In the case of Daniel Otieno Oracha v Republic [2019] eKLR, Aburili J held as follows on the issue of jurisdiction and abuse of court process:

“The court’s jurisdiction is derived from various statutes and Article 165 of the *Constitution*. In Samuel Kamau Macharia & Another v KCB & 2 Others App. No. 2 of 2011, the Supreme Court of Kenya made it clear that a court cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law; and that a court cannot expand its jurisdiction through judicial craft.”

6. The judgment of Abida Ali-Aroni J was made in accordance with the law and has not been challenged. This Court cannot sit on appeal over its own judgment or that of a court of concurrent competent jurisdiction, especially when the petitioner had the opportunity to ventilate his grievance before the Court of Appeal—even if it was to challenge the sentence alone.

“Good governance demands that cases be handled procedurally in the right forum. This is because the rule of thumb is that superior courts cannot sit in review or appeal over decisions of their peers of equal and competent jurisdiction, much less those courts higher than themselves. Matters falling under the exclusive jurisdiction of the Supreme Court under Article 163(3) cannot be dealt with by the High Court.”

7. I looked at the sentence review report. Even though it is positive, I have not seen anything that would persuade me, even on humanitarian grounds, to revisit the sentence.

8. The application is hereby dismissed. The applicant shall continue to serve his sentence.

DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE VIA MS TEAMS ON THIS 9TH DAY OF OCTOBER 2025.

HON. LADY JUSTICE W. K. MICHENI

JUDGE

In the presence of: -

The Applicant in person

Mr Ngiri for the State

Ms bebora Court Assistant

HON. LADY JUSTICE W. K. MICHENI

W.K. MICHENI J

