

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
MISCELLANOEUS CRIMINAL APPLICATION NO. E040 OF
2025

WILLY KUNGU MWANGI.....
APPLICANT

VERSUS

REPUBLIC.....
.....RESPONDENT

R U L I N G

Brief Facts

1. The application for determination is undated in which the applicant seeks to have his sentence reviewed and for the court to allow him serve the remainder of his sentence pursuant to Section 4 and 5 of the Probation of Offenders Act.
2. The applicant was convicted by Thika Chief Magistrate, in Criminal Sexual Offence Case No. 2024 of 2016 with three counts of the offence of indecent act with a child contrary to Section 11(1) of the Sexual Offences Act No. 3 of 2006

and was sentenced to serve ten (10) years imprisonment on each count which sentences were to run concurrently. The applicant appealed on to the High Court in Kiambu Criminal Appeal No. E089 of 2021 and the appeal was dismissed on 5th May 2022. The applicant states that he has waived his right to appeal to the Court of Appeal.

3. The applicant herein seeks for review on sentencing and asks the court to invoke **Section 4 and 5 of the Probation of Offenders Act** and grant him a non custodial sentence for the remainder of his sentence which is less than three (3) years. The applicant refers to the cases of **High Court Nairobi Criminal Case No. 55 of 2015, Republic vs Godfrey Muchanji Ojiambo; High Court Kerugoya Criminal Review No. E024 of 2022 Republic vs Daniel Wachira Mathu** and **Chief Magistrates Court Makadara Criminal Sexual Offences Case No. 2374 of 2015** to support his contentions. The applicant further states that he is a first offender, remorseful and has undergone various rehabilitation programmes while in custody.

The Law

4. The applicant has come to this Honourable court by way of review provided for under Article 50 of the Constitution. It provides:-

(2) Every accused person has the right to a fair trial, which includes the right:-

(q) If convicted, to appeal to, or apply for review by a higher court as prescribed by law.

5. The above provision prohibits review where a convict has gone through the appeal process. In the instant matter the applicant was convicted together with his co-accused Laban Wambugu Waruguru by Thika Chief Magistrate, in Criminal Sexual Offence Case No. 2024 of 2016 with three counts of the offence of indecent act with a child contrary to Section 11(1) of the Sexual Offences Act No. 3 of 2006 and was sentenced to serve ten (10) years imprisonment on each count, each sentence was ordered to run concurrently. The applicants separately appealed on to the High Court Kiambu in Criminal Appeal Nos. E088 of 2021 and E089 of 2021 and the appeals were consolidated, heard and dismissed on 5th May 2022. The applicant further filed an application for review of his sentence which was dismissed on 22nd July 2024. The applicant herein having filed an appeal and review in the High Court Kiambu has no legal basis of approaching this court for a review under Article 50(2) (q).
6. It is therefore, evident that this court has no power to review the judgment of the High Court Kiambu which upheld the conviction and sentence in the applicant's case.
7. As such I find this application misconceived and incompetent and it is hereby struck out.

8. It is hereby so ordered.

***RULING DELIVERED VIRTUALLY, DATED AND SIGNED
AT THIKA THIS 30TH DAY OF OCTOBER 2025.***

**F. MUCHEMI
JUDGE**