

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT THIKA**  
**MISCELLANEOUS CRIMINAL APPLICATION NO. E044 OF**  
**2025**

**O.R.G. CASE NO. 39 OF  
2018.....APPLICANT**

**VERSUS**

**SHADRACK KHAOYA MAKHOHA.....  
.....RESPONDENT**

**R U L I N G**

**1.** This application seeks review of sentence in two limbs; i) under S. 333(2) of the Criminal Procedure Code, that is, consideration of the time spent in custody pending trial; ii) that the sentence of twenty (20) years imprisonment be reviewed downwards for several reasons set out in his application. The applicant states that he filed an appeal in the High Court, Kiambu No.25 of 2019 which appeal was dismissed. He said that, much later, he filed an application

to file a second appeal out of time in the Court of Appeal but he received no response.

2. I have perused the High Court judgment in Kiambu HCCRA No.25 of 2019 where the appeal was dismissed for lack of merit by judge E. Maina on 26/09/2019. It is noted that the applicant has gone through an appeal in a court of concurrent jurisdiction with this court whereas his appeal was dismissed. He was charged with the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the Sexual Offences Act which carries a sentence of life imprisonment. The magistrate's court following the then prevailing jurisprudence set by the Court of Appeal sentenced him to twenty (20) years imprisonment which was a very lenient sentence.
3. It is imperative to note that the Supreme Court has in its recent judgments in the Petitions **R v Julius Kitsayo Manyeso Petition No. E013 of 2024** and that of **R v Evans Nyamari Ayako Petition No. E002 of 2024** where the court overturned the Court of Appeal judgments that had held in several cases that life sentence was equivalent to 30 - 40 years imprisonment. The Supreme Court held that the lawful sentence in defilement was the sentence provided under Section 8 of the Act, that is life imprisonment. This being the current jurisprudence, this court cannot review

sentence under Section 8(1) and 8(2) of the Act. The applicant must consider himself lucky to have been sentenced to only twenty (20) years imprisonment. Article 50 (2) (q) of the Constitution provides: -

**“Every accused person has the right to a fair trial, which includes the right - if convicted, to appeal to, or apply to review by, a higher court as prescribed by law.”**

4. The applicant had only one option under Article 50 (2) (q), either to appeal or to apply for review in a higher court. He has exhausted his option of filing an appeal. As such, the accused does not qualify to apply for review.
5. Consequently, I find that his application is incompetent and misconceived and it must fail.
6. It is hereby struck out with no order as to costs.
7. It is hereby so ordered.

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

**F. MUCHEMI**

# **JUDGE**