



REPUBLIC OF KENYA



**Wambui v Republic (Criminal Revision E035 of 2025)  
[2025] KEHC 15547 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15547 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CRIMINAL REVISION E035 OF 2025  
FN MUCHEMI, J  
OCTOBER 30, 2025**

**BETWEEN**

**SIMON KIMANI WAMBUI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The application for determination is dated 21<sup>st</sup> February 2025 in which the applicant seeks to have sentence reviewed under Section 333(2) of the Criminal Procedure Code.
2. The applicant was convicted by Gatundu Principal Magistrate Criminal Sexual Offence Case No. 3072 of 2014 with the offence of defilement contrary to Section 8(1) as read with 8(3) of the [Sexual Offences Act](#) No. 3 of 2006 and was sentenced to serve twenty (20) years imprisonment. The applicant appealed on to the High Court in Kiambu being Criminal Appeal No. 91 of 2017 and the appeal was dismissed on 10<sup>th</sup> October 2017. The applicant further appealed to the Court of Appeal in Nairobi vide Criminal appeal No. 67 of 2019 and the appeal was dismissed.
3. The applicant herein seeks for review on sentencing and prays that this court do invoke section 333(2) of the Criminal Procedure Code by considering the period he stayed in remand custody pending trial. The applicant states that he was arrested on 20<sup>th</sup> November 2014 and sentenced on 26<sup>th</sup> September 2016 which amounts to 2 years that the trial magistrate failed to consider during sentencing. The applicant further states that he was sentenced under Section 8(3) of the [Sexual Offences Act](#) which provides for a minimum mandatory sentence of 10 years yet he was sentenced to 20 years imprisonment and therefore urges the court to give him a lower sentence.



## 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 by Gatundu Principal Magistrate, in Criminal Sexual Offence Case No. 3072 of 2014 with the offence of defilement contrary to Section 8(1) as read with 8(3) of the *Sexual Offences Act* No. 3 of 2006 and was sentenced to serve twenty (20) years imprisonment. The applicant appealed on to the High Court in Kiambu Criminal Appeal No. 91 of 2017 and the appeal was dismissed on 10<sup>th</sup> October 2017. The applicant further appealed to the Court of Appeal in Nairobi vide Criminal appeal No. 67 of 2019 and the appeal was dismissed. The applicant herein having filed two appeals in the highest appeal courts 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 Court of Appeal and the High Court Kiambu which both upheld the conviction and sentence in the applicant's case.
7. Furthermore, recent Supreme Court decisions have held that the sentence for the offence of defilement is the one provided under Section 8 of the *Sexual Offences Act*. In the Petition R vs Julius Manyeso (Petition E013 of 2024) [2025] KESC 16 (KLR) (11 April 2025) (Judgment) the Supreme Court set aside the sentence of 40 years imprisonment reviewed by the Court of Appeal and substituted it with life imprisonment on grounds that Section 8 of the Act forms the basis of sentencing convicts in cases of defilement. The applicant was sentenced in accordance with Section 8(1) and 8(3) of the Act which was in accordance with the law.
8. This court is bound by decisions of the Supreme Court under Article 163(7) of *the Constitution*. As such I find this application misconceived and incompetent.
9. 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**

