



REPUBLIC OF KENYA



KENYA LAW
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Dzuye v Office of the Director of Public Prosecutions (Criminal Miscellaneous Application E185 of 2024) [2025] KEHC 16747 (KLR) (13 November 2025) (Ruling)

Neutral citation: [2025] KEHC 16747 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL MISCELLANEOUS APPLICATION E185 OF 2024**

**WM KAGENDO., J
NOVEMBER 13, 2025**

BETWEEN

CHIGONGO DZUYE APPLICANT

AND

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

(Revision of sentence in Mombasa Magistrate Criminal Case (SO) No. 334 of 2017 delivered on 5th October 2017)

RULING

1. The Notice of Motion dated 17th September 2024, prepared by the Applicant, is brought under Section 364 of the Criminal Procedure Code. The Applicant, through his self-drafted application, has moved this Court seeking a review of his sentence.
2. The Applicant was charged, convicted, and sentenced to life imprisonment for the offence
3. of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act*, vide Mombasa Magistrate Criminal (SO) Case No. 334 of 2017.
4. Being dissatisfied with the said decision, he filed Mombasa HCCR Appeal No. E187 of 2017, and on 5th September 2018, the High Court upheld his conviction but reduced his sentence to thirty (30) years imprisonment.
5. In his present application, the Applicant contends that the thirty-year sentence remains harsh and excessive. He submits that he has acquired transformative skills while in incarceration and prays to be reintegrated into society.
6. In support of his application, the Applicant expresses remorse and regret for his actions, stating that his time in prison has allowed him to reflect deeply and understand his wrongdoing.



7. The State Department for Correctional Services, through the Officer in Charge of Shimo la Tewa Maximum Security Prison, prepared the Applicant's progressive report. The report notes that during his incarceration, the Applicant has exhibited good behaviour, regularly attends prayers, and cooperates well with others. It was further observed that he has shown signs of reform, and a review of his sentence could be considered.
8. I have considered the application, the supporting affidavit, and the progressive report. The Respondent has not opposed or filed submissions on the application. The issue for determination is whether the application has merit and what orders this Court should issue.

Jurisdiction of the High Court

9. It is well settled in law that the High Court cannot review or alter a sentence imposed or upheld by another judge of the same court once an appeal has been determined. This Court, therefore, lacks jurisdiction to review or set aside a decision made by a judge of concurrent jurisdiction.
10. This principle, grounded in the doctrine of stare decisis and the hierarchy of courts, ensures consistency, order, and finality in judicial decisions.
11. In *Joseph Nduvi Mbuvi v Republic* (2019) eKLR, the Court of Appeal reaffirmed that a judge of the High Court cannot sit on appeal or review a decision of another judge of the same court, as doing so would undermine judicial comity and create uncertainty in the administration of justice.
12. Similarly, in *Republic v Karisa Chengo & 2 Others* (2017) eKLR, the Supreme Court held that the High Court cannot revisit or alter a sentence imposed by another High Court judge unless such decision is appealed to a higher court or reviewed under express statutory provisions.
13. Therefore, the Applicant's request for a review of his thirty-year sentence cannot be entertained by this Court. Doing so would amount to sitting on appeal over a decision of a judge of equal standing. The Applicant's proper recourse lies with the Court of Appeal, as provided under Article 164(3) of *the Constitution* of Kenya, 2010.

Scope of Section 364 of the Criminal Procedure Code

14. Section 364 of the Criminal Procedure Code grants this Court supervisory and revisional powers over subordinate courts. It allows the Court to alter or reverse orders (other than acquittals) and to enhance or stay sentences issued by subordinate courts. However, it does not empower this Court to make orders that would have the effect of reviewing a decision of another High Court judge.

Substantive Consideration

15. The record shows that the complainant was 11 years old at the time the offence was committed. Section 8(1) as read with Section 8(2) of the *Sexual Offences Act* provides that a person who defiles a child aged 11 years or less shall, upon conviction, be sentenced to life imprisonment.
16. In *Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 Others (Amicus Curiae)* (Petition E018 of 2023) [2024] KESC 34 (KLR) (12 July 2024), the Supreme Court affirmed the constitutionality of minimum sentences under the *Sexual Offences Act*, holding that courts must impose them unless and until they are declared unconstitutional.
17. The Court of Appeal, in *Charles & Another v Republic* (Criminal Appeal 38 of 2019) [2024] KECA 1902 (KLR) (25 October 2024), followed the above binding precedent, emphasizing that trial courts have no discretion to go below the statutory minimum sentences prescribed in the *Sexual Offences Act*.



18. Furthermore, in Republic v Ayako (Petition E002 of 2024) [2025] KESC 20 (KLR) (11 April 2025), the Supreme Court held that the substitution of life imprisonment with a term of years amounts to judicial legislation, which falls outside the jurisdiction of the courts. The Court reiterated that defining the parameters of life imprisonment is the role of Parliament, not the Judiciary.
19. From the foregoing, it is clear that the sentence prescribed under Section 8(1) as read with Section 8(2) of the *Sexual Offences Act* is mandatory. Given that the trial court found all the elements of the offence proved beyond reasonable doubt, there is no discretion available to this Court to vary or reduce the sentence.

Sentence Review Report

20. I have also considered the Sentence Review Report dated 23rd October 2025. The report indicates that the Applicant does not take full responsibility for the offence. The victim, who was 11 years old at the time of the offence, could not be reached, and thus his views were not captured. The Applicant states that he enrolled in a carpentry course but dropped out due to depression. He is currently undergoing counselling and actively participates in Muslim teachings. However, I am not persuaded by the report to warrant interference with the lawful sentence.

Conclusion

21. In view of the foregoing analysis, I find that the Application dated 17th September 2024 lacks merit and is hereby dismissed in its entirety.

**DELIVERED, DATED, AND SIGNED AT MOMBASA THIS 13TH DAY OF NOVEMBER 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

WENDY KAGENDO MICHENI JUDGE

In The Presence Of;

Applicant Respondent : Mr Ngiri

Court Assistant : Ms Bebora

