



REPUBLIC OF KENYA



**Waweru v Republic (Criminal Revision E058 of 2025)
[2025] KEHC 17358 (KLR) (20 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17358 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION E058 OF 2025
FN MUCHEMI, J
NOVEMBER 20, 2025**

BETWEEN

SAMUEL GITAU WAWERU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Brief Fact

1. The application for determination is undated whereas the applicant seeks for orders of review of sentence under Section 333(2) of the Criminal Procedure Code.
2. The applicant says he was convicted by Gatundu Chief Magistrate, in Criminal (S.O.) Case No. 9 of 2018 of the offence of defilement contrary to Section 8(1) as read with 8(2) of the *Sexual Offences Act* No. 3 of 2006 and was sentenced to serve twenty-five (25) years imprisonment.
3. The applicant seeks for review of sentence and urges this court to invoke Section 333(2) of the Criminal Procedure Code and consider the period of 1 year and 4 months that he spent in custody. The applicant further states that he is remorseful, a first offender and is rehabilitated. Furthermore, the applicant states that he suffers from AIDs and his health is deteriorating in prison as his medication requires specialized treatment and diet.
4. The respondent concedes to the instant application.

The Law

5. This court is empowered by Article 165(6) of *the Constitution* of Kenya to review a decision by a subordinate court. Article 165(6) provides:-



The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

6. The applicant herein was convicted in Chief Magistrate Court in Gatundu in Criminal (SO) Case No. 9 of 2018 with the offence of defilement contrary to Section 8(1) as read with 8(2) of the *Sexual Offences Act* No. 3 of 2006. The applicant was sentenced to twenty-five (25) years imprisonment and being aggrieved by the conviction and sentence appealed to the High Court in Kiambu being Criminal Appeal No. E075 of 2021 whereby the court upheld the conviction and substituted the sentence of 25 years with a sentence of 15 years to run from the date the sentence was imposed by the trial court. The appellate court whilst substituting the sentence took into consideration the period the applicant had spent in custody from 28th May 2018 to the time he was sentenced on 14th August 2019.
7. Article 50(2)(q) of *the Constitution* is of relevance which gives a convicted person two options: to appeal or to apply for review in a higher court. He chose to appeal to the High Court Kiambu where his appeal was heard and determined. The court reduced the sentence of twenty-five (25) years to fifteen (15) years. The conviction was upheld under Article 50 (2). The applicant has exhausted his remedy of appeal and is not open to review. It is not in dispute that the High Court dealt with the sentence in favour of the accused. As such, this application is not supported by the law.
8. It is important to state that the applicant having lodged an appeal at the High Court in Kiambu cannot come back to this court to seek for orders of resentencing as this court has no power to review the orders of a court with concurrent jurisdiction.
9. Even assuming that this court was possessed of the requisite jurisdiction, it is noted that the recent Supreme Court decisions in defilement cases 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.
10. 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 and I hereby strike it out.
11. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 20TH DAY OF NOVEMBER 2025.

F. MUCHEMI

JUDGE

