



**Mutua v Republic (Miscellaneous Criminal Application E008 of 2025)
[2025] KEHC 17631 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17631 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CRIMINAL APPLICATION E008 OF 2025
FN MUCHEMI, J
NOVEMBER 27, 2025**

BETWEEN

PAUL MULI MUTUA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The application for determination is dated 26th May 2025 in which the applicant seeks to have his sentence reviewed on the grounds that the life sentence meted upon him is unconstitutional.
2. The applicant was convicted by Thika Magistrate, in Criminal Sexual Offence Case No. 18 of 2016 with 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 life imprisonment. The applicant appealed on to the High Court in Kiambu being Criminal Appeal No. 32 of 2019 and the appeal was dismissed on 15th October 2019.
3. The applicant herein seeks for review on sentencing and asks the court to invoke section 333(2) of the Criminal Procedure Code and consider the period he served in remand custody pending the hearing and disposal of his case. The applicant states that he was arrested on 3rd October 2016 and had been in custody since then. The trial magistrate failed to consider the said period during sentencing.
4. The applicant urges the court to be guided by the cases of Criminal Appeal No. 22 of 2018 Evans Nyamari Ayako vs Republic and Ali Abdalla Mwanza vs Republic [2018] eKLR on life expectancy and states that he is 45 years of age.
5. The respondent opposes the application vide Grounds of Opposition dated 30th July 2025 and states that the court has become functus officio and has no jurisdiction to resentence since a court of concurrent or similar jurisdiction, that is, the Kiambu High Court vide Appeal No. 32 of 2019 upheld the sentence of the trial court and dismissed the appeal on conviction. The respondent further argues



that asking the current court to resentence is equivalent to asking the court to sit as an appellate court against its own judgment and determine whether the appeal has chances of success.

6. The respondent states that the issue of conviction and sentence were dealt with conclusively on appeal and the judgment of the magistrate upheld. The recent decisions by the Supreme Court Petition No. E002 of 2024 Republic vs Evans Nyamari Ayako and Petition No. E013 of 2024 Republic vs Julius Kitsao Manyeso have held that life imprisonment is legal and not in contravention of the

constitution in defilement cases.

7. The respondent avers that the application is an abuse of the court process.

The Law

8. Article 50 of *the Constitution* prohibits review where a convict has gone through an appeal process. 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.

9. In the instant matter the applicant was convicted by Thika Chief Magistrate, in Criminal Sexual Offence Case No. 18 of 2016 with 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 life imprisonment. The applicant appealed to the High Court in Kiambu Criminal Appeal No. 32 of 2019 whereas the appeal was dismissed on 15th October 2019. The conviction and sentence of the magistrate court were upheld. The applicant has no legal basis of approaching this court for a review under Article 50(2) (q).

10. It is evident that this court has no power to review the judgment of the High Court in Kiambu, a court of concurrent jurisdiction and which upheld the conviction and sentence in the appeal before it.

11. Furthermore, recent Supreme Court decisions have held that the sentence for the offence of defilement is the one provided under Section 8(1) and 8(3) 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.

This court is bound by decisions of the Supreme Court under Article 163(7) of *the Constitution*.

12. As such I find this application misconceived and incompetent and it is hereby struck out.

13. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 27TH DAY OF NOVEMBER 2025.

F. MUCHEMI

JUDGE

