

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
MISCELLANEOUS CRIMINAL APPLICATION NO. E066 OF
2025

JUSTUS WANYONTI BUSIE.....
APPLICANT

VERSUS

REPUBLIC.....
.....RESPONDENT

R U L I N G

Brief Facts

1. The application for determination is dated 26th September 2025 seeks for orders of review of sentence.
2. The applicant was convicted by Thika Chief Magistrate, in Criminal (S.O) Case No. E054 of 2021 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 current court vide Criminal Appeal No. 100 of 2023 and the appeal on conviction was dismissed but the sentence for life imprisonment was substituted with a sentence of twenty (20) years imprisonment.

3. The applicant herein seeks for review of sentence and urges this court to reduce his sentence further considering he is 31 years old and married with children who need his presence at home. The applicant further states that he is rehabilitated and has become a member of the protestant church.

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 Thika Chief Magistrate, in Criminal (S.O) Case No. E054 of 2021 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 current court vide Criminal Appeal No. 100 of 2023 and the appeal on conviction was dismissed and the sentence of life imprisonment was substituted with twenty (20) years imprisonment on 24th October 2024. The applicant herein having filed an appeal in the current court 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 its own judgment which upheld the conviction of the trial court. Such a move would be contrary to Article 50 (2)(q) of the Constitution.

The court allowed the appeal in regard to sentence and reduced the life imprisonment sentence to twenty (20) years imprisonment.

7. The applicant was lucky in getting his sentence reduced due to the fact that the Supreme Court decisions had not been passed. 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(2) 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.

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. It is hereby struck out.

9. It is hereby so ordered.

***RULING DATED AND SIGNED AT THIKA THIS 11TH DAY
OF DECEMBER 2025.***

**F. MUCHEMI
JUDGE**