

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT THIKA

MISCELLANEOUS CRIMINAL APPLICATION NO. E054 OF

2025

**PETER NDEGWA KAHURO.....
APPLICANT**

VERSUS

**REPUBLIC.....
.....RESPONDENT**

R U L I N G

Brief Facts

1. The application for determination is dated 8th June 2025 in which the applicant seeks to have his sentence reviewed under Section 329 of the Criminal Procedure Code.
2. The applicant was convicted by Thika Chief Magistrate, in Criminal (S.O) Case No. E057 of 2020 with the offence of defilement contrary to Section 8(1) as read with 8(4) of the Sexual Offences Act No. 3 of 2006 and was sentenced to serve twenty (20) years imprisonment. The applicant appealed to the High Court Kiambu vide Criminal Appeal No. E063 of 2021 and the appeal on conviction was dismissed and the sentence of twenty (20) years substituted with a sentence of fifteen (15) years. The applicant states that he has not

lodged an appeal to the Court of Appeal and does not intend to do so.

3. The applicant herein seeks for review on sentencing and asks the court to reduce his sentence further considering he is 34 years old, an orphan, a first offender, remorseful and rehabilitated.

The Law

4. The applicant herein was convicted in Chief Magistrate Court in Thika in Criminal (SO) Case No. 57 of 2020 with the offence of defilement contrary to Section 8(1) as read with 8(4) of the Sexual Offences Act No. 3 of 2006 and was sentenced to twenty (20) years imprisonment. The applicant appealed on to the High Court Kiambu vide Criminal Appeal No. E063 of 2021 and the appeal on conviction was dismissed and sentence of twenty years substituted with fifteen (15) years on 20th April 2023. **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.

5. The applicant herein having filed an appeal in the High Court in Kiambu which was fully heard and determined by a court of competent jurisdiction, 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 judgment of a court with concurrent jurisdiction which upheld the conviction and the sentence.
7. 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. Furthermore the Supreme Court in **Republic vs Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 Others (Amicus Curiae) (Petition E018 of 2023) [2024] KESC 34 (KLR) (12 July 2024) (Judgment)** held that the sentence provided in Section 8 of the Sexual Offences Act remained lawful as long as the said provision remained valid.
8. It is trite that this court is bound by decisions of the Supreme Court under Article 163(7) of the Constitution.
9. As such I find this application misconceived and incompetent and it is hereby struck out.

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

**F. MUCHEMI
JUDGE**