



REPUBLIC OF KENYA



**Oreri v Republic (Criminal Revision E057 of 2025)  
[2025] KEHC 18446 (KLR) (4 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18446 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CRIMINAL REVISION E057 OF 2025  
FN MUCHEMI, J  
DECEMBER 4, 2025**

**BETWEEN**

**ELIJAH MOGOI ORERI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Background**

1. This application dated 26<sup>th</sup> May 2025 seeks for orders of review of sentence under Section 333(2) of the *Criminal Procedure Code* and Section 35 of the *Penal Code* as well as an order that this court finds the time he has spent in prison to serve as sufficient punishment.
2. The applicant was convicted by Ruiru Senior Principal Magistrate, in Criminal Sexual Offence Case No. 8 of 2019 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 serve ten (10) years imprisonment.
3. The applicant seeks for review on sentencing urging this court to invoke Section 333(2) of the *Criminal Procedure Code* and consider the period of 6 months that he spent in custody from the date of arrest being 25<sup>th</sup> July 2019.
4. In opposition to the application, the respondent filed an application for review of the applicant's sentence vide letter dated 20<sup>th</sup> November 2025 on the grounds that the sentence is lenient given that Section 8(2) of the *Sexual Offences Act* prescribes life imprisonment for the offence of defilement. The respondent argues that the victim was below 11 years of age and therefore the applicant ought to have been convicted to life imprisonment. Furthermore, the respondent argues that the sentence of ten years was illegal and constituted a big error of principle. The respondent refers to the cases of the Supreme Court being Petition No. E002 of 2024 *Republic v Evans Nyamari Ayako* and Petition No. E013 of 2024 *Republic v Julius Kitsao Manyeso* and submits that the Supreme Court has held that life



imprisonment under Section 8(2) of the [Sexual Offences Act](#) is legal and not in contravention of the [Constitution](#) in defilement cases.

## 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 Senior Principal Magistrate Court in Ruiru in Criminal (SO) Case No. 8 of 2019 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 ten (10) years imprisonment. The applicant did not appeal the decision.

7. 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.

8. In the instant matter the applicant has not appealed the decision of the trial court and thus the application for review is proper before the court.

9. The applicant was arrested on 25<sup>th</sup> July 2019 and upon taking plea he was granted bond of Kshs. 500,000/- with one surety of similar amount. The trial court delivered its judgment and sentenced the applicant on 30<sup>th</sup> January 2020. Thus, the applicant spent six (6) months in custody which by virtue of Section 333(2) of the [Criminal Procedure Code](#), this period is required to be considered during sentencing. However, the respondent opposed this application on grounds that a sentence of life imprisonment ought to have been imposed. Further, that the sentence of ten (10) years was too lenient considering the gravity of the offence. The respondent has cited the recent Supreme Court decisions arguing the sentence of ten years imposed by the trial court was illegal and unlawful.

10. Section 8(2) of the [Sexual Offences Act](#) provides for life imprisonment for any person who commits an offence of defilement with a child aged eleven years or less. Further, 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 v 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 v 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.

11. It is important to state that this court is bound by the decisions of the Supreme Court under Article 163 (7) of the [Constitution](#). This court cannot review the applicant's sentence based on the foregoing reasons.

12. Consequently, 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 4<sup>TH</sup> DAY OF  
DECEMBER 2025.**

**F. MUCHEMI**

**JUDGE**

