



**Kamende v Republic (Miscellaneous Criminal Application
E069 of 2025) [2026] KEHC 2090 (KLR) (19 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2090 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CRIMINAL APPLICATION E069 OF 2025
FN MUCHEMI, J
FEBRUARY 19, 2026**

BETWEEN

MARTIN MUTUA KAMENDE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The application for determination is undated whereas the applicant seeks for orders of review of sentence.
2. The applicant states that he was convicted by Thika Chief Magistrate in Criminal S.O Case No. 3428 of 2015 with the offence of defilement contrary to Section 8(1) as read with 8(3) of the *Sexual Offences Act* No. 3 of 2006 and was sentenced to twenty (20) years imprisonment. The applicant appealed against the judgment of the trial court in Kiambu Criminal Appeal No. 4 of 2019. The appeal was heard and the court reviewed the sentence of twenty years to fifteen years to run from the date of the sentence. The applicant states that he did not lodge an appeal to the Court of Appeal and as such ought to be heard in this application.
3. The applicant seeks for review of his sentence and asks the court to invoke Article 50(2)(p) & (q) of *the Constitution* and grant him a lesser sentence. Further, the applicant states that the time he spent in custody was not computed in the sentence imposed of fifteen years.

The Law

4. 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.



5. The applicant herein was convicted in Chief Magistrate Court in Thika in Criminal (SO) Case No. 3428 of 2015 with the offence of defilement contrary to Section 8(1) as read with 8(3) of the *Sexual Offences Act* No. 3 of 2006. The applicant was sentenced to twenty years and being aggrieved by the conviction and sentence appealed to the High Court in Kiambu being Criminal Appeal No. 4 of 2019 whereby the court upheld the conviction and substituted the sentence of twenty years with fifteen years to run from the date the applicant was sentenced by the lower court.
6. Article 50(2)(q) of *the Constitution* provides that the applicant after conviction had two options: to appeal or to apply for review in a higher court. He chose to appeal to High Court Kiambu where his appeal was heard and determined. Under Article 50(2) (q) the applicant has exhausted his constitutional rights. Litigation must come to an end is a maxim in law that must be observed by the courts. This maxim is very ably captured in *the Constitution* of Kenya that calls for expeditious disposal of cases and putting an end to them. The Applicant seems to want to try his luck in different courts which cannot be entertained.
7. It is important to state that the applicant having lodged an appeal at the High Court in Kiambu, the applicant has no basis in law to file the current application for review of sentence. This court does not possess the powers to review the orders of a court of concurrent jurisdiction.
8. The other issue in this application is that there exists recent Supreme Court judgments in defilement cases where it was 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.
9. This court is bound by decisions of the Supreme Court under Article 163(7) of *the Constitution*.
10. As such I find this application misconceived and incompetent. It is hereby struck out.
11. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 19TH DAY OF FEBRUARY 2026.

**F. MUCHEMI
JUDGE**

