

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**CRIMINAL REVISION NO. E080 OF 2025**

**JAMES MURUNGA ..... APPLICANT**

**VERSUS**

**REPUBLIC .....  
RESPONDENT**

**IN THE MATTER OF ENFORCEMENT OF BILL OF RIGHTS AS  
UNDER ARTICLE 22(1) OF THE CONSTITUTION OF KENYA  
2010**

**AND**

**IN THE MATTER FUNDAMENTAL RIGHTS AND FREEDOM  
UNDER ARTICLE 27, 28, 29 AND 48 OF THE CONSTITUTION OF  
KENYA 2010**

**Coram: Justice R. Nyakundi**

**M/s Sidi for the State**

**RULING**

1. Before Court is a Notice of Motion dated 4<sup>th</sup> June 2025 expressed to have been brought under Articles 379(4), 356 & 357 Cap 75, 165 (3) a & b, 50(2) Q, 27, 28, 326 and 216 any other enabling laws of CPC. The Applicant is seeking for the following orders:
  - a) That the Petitioner is seeking for sentence review in accordance to Article 50(2) (p) (q) and Section 362 & 364 of the Constitution of Kenya 2010.
  - b) That this matter is certified as urgent and be heard in the first instance.
  - c) That Applicant is requesting for only sentence review.
  - d) That the Applicant will be seeking a declaration by the Court that the application has merits and qualifies to be heard.
2. Which application is based on the following grounds:

- a) That the Applicant was charged, convicted and sentenced to 15 years for the offence of defilement contrary to Section 8(1) as read with 8(3) of the SOA No. 3 of 2006.
- b) That the Applicant is requesting for a sentence review.
- c) That the Applicant is a first offender and he is remorseful, repentant and God fearing.
- d) That this honourable court has unlimited jurisdiction to hear and determine this application under the provision of Article 165(3) (b) of the Constitution of Kenya 2010.
- e) That this honorable court has powers to hear and determine, infringement of fundamental rights and award remedies under the provisions of Section 216 and 389 of the Criminal Procedure Code on mitigation and the values of sentencing as provided for in the Sentencing Policy Guidelines 2016 paragraph 4.1.

3. The application is supported by an affidavit sworn by the Applicant who deposes as follows:

- a) That I was charged with the offence of defilement c/s 8(1) (3) of the Sexual Offences Act of 2006 Laws of Kenya, convicted and sentenced to serve 15 years imprisonment.
- b) That this honorable court has the powers under Article 23 as read with Article 165(3) (a) (b) on retrace where omission occurred during retrial as it was held in case of Protus Buliba Shikuku vs Attorney General 2012 eKLR.
- c) That I am seeking this honorable court to review the sentence and grant me a non-custodial sentence.
- d) That more grounds to be adduced and canvassed through written submissions and hearing thereof which I intend to be present.
- e) That there are mitigating, favorable and post conviction records that indicate that am fully rehabilitated and reformed thus deserving social reintegration to the society for nation building.

- f) That the honorable court should consider all the sentencing objectives in totality where rehabilitation and reformation are essential goals and not solely retribution.
  - g) That may the honorable court be pleased to order for probation report.
  - h) That given an opportunity I will abide by the laws of the land and be a good example in the society.
  - i) That I wish to be present during the hearing and determination of this application.
4. The Applicant was tried, found guilty, convicted and sentenced to 15 years imprisonment on 17/9/2024.

**Decision**

5. The Applicant in this matter was prosecuted in terms of Section 8(1) as read with Section 8(2) of the Sexual Offences Act. It at the close of the proceedings the learned Magistrate sentenced him to 15 years imprisonment. In terms of review under Section 362 of the Criminal Procedure Code I find no irregularity, illegality, or unjustness on the sentence save for one reason that I put the Applicant on notice that the trial within a trial will be undertaken for purpose of enhancement of sentence to life imprisonment.
6. A status conference be heard on 3<sup>rd</sup> of March 2026 for enhancement of sentence. The Applicant will be at liberty to file any submissions to that effect and production order to issue.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET  
THIS 23<sup>RD</sup> DAY OF FEBRUARY 2026.**

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**R. NYAKUNDI**  
**JUDGE**