

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT THIKA**  
**CRIMINAL REVISION NO. E083 OF 2025**

**DISHON OMUNGU OMULAMA.....**  
**APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

**Brief Facts**

1. The application for determination is dated 12<sup>th</sup> September 2025 in which the applicant seeks to have his sentence reviewed downwards in light of his mitigation set out in his application.
2. The applicant said he was convicted by Thika Chief Magistrate in Criminal S.O Case No. 1359 of 2014 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 serve twenty (20) years imprisonment.

3. The applicant herein seeks for review on sentencing and prays that the court considers his age and his good conduct while in custody. The applicant states that he is 70 years old and is sickly and as such, he would benefit from care from his family if given a custodial sentence.

### **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 stated in his application that he was sentenced by Thika Chief Magistrate in Criminal (S.O.) Case No.1359 of 2014 to twenty years imprisonment. However, this court came across judgment in H.C. Thika Criminal Appeal No.15 of 2023 whereas he applicant appealed against both conviction and sentence against the judgment of Thika Chief Magistrate Cr. Case (S.O.) No.1359 of 2024. He was convicted of defilement under Section 8(1) and 8(3) of the Sexual Offences Act, 2006 and sentence to life imprisonment and not twenty (20) years as he told the court. His appeal was fully heard by Judge B. Njoroge and judgment delivered

on 31<sup>st</sup> July 2025. The appeal was dismissed in its entirety. The facts of this case as presented by the applicant are bungled to confuse this court. However, I proceed to the merits of the application.

6. **Article 50(2)(q) of the Constitution** is of relevance herein. The applicant after conviction had two options: to appeal or to apply for review in a higher court. He chose to appeal to the instant court and cannot have a second bite of the cherry under Article 50(2) (q). Having filed an appeal that was fully heard and determined, the applicant has exhausted his constitutional right. I hereby cite the maxim that litigation must come to an end and this is the purpose served by provisions of the Constitution and statute law
7. It is important to state that the applicant having lodged an appeal cannot seek resentencing in this court that lacks powers to review the judgment of a court of concurrent jurisdiction.
8. The second issue herein is that there exists recent Supreme Court decisions where the court 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 which are very clear and straight forward on the issue of sentencing in defilement cases.
10. Taking into consideration the facts of this application, I find that it is incompetent and misconceived and it is hereby struck out.
11. It is hereby so ordered

***RULING DELIVERED VIRTUALLY, DATED AND SIGNED  
AT THIKA THIS 19<sup>TH</sup> DAY OF FEBRUARY 2026.***

**F. MUCHEMI  
JUDGE**