



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ndaithu v Republic (Criminal Revision E005 of 2025)  
[2026] KEHC 5472 (KLR) (28 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5472 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
CRIMINAL REVISION E005 OF 2025**

**RL KORIR, J  
APRIL 28, 2026**

**BETWEEN**

**TIMOTHY KINOTI NDAITHU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Timothy Kinoti Ndaithu (Applicant) seeks review of the sentence imposed on him by the Marimanti Principal Magistrate's Court in Criminal Case No.44 of 2019.
2. He had been charged and tried with the offence of defilement contrary to section 8(1) as read with section 8(4) of the *Sexual Offences Act*, and; upon conviction, was sentenced to serve 15 years' imprisonment.
3. The Applicant states that he was remorseful, was a first offender and was adequately reformed having spent some time in prison.
4. In written submissions, dated 28<sup>th</sup> July 2025, the Applicant stated that his prayer was for his sentence to be reduced by the time he had spent in pre-trial custody. He further urged that he had reformed and that his circumstances as at time of this Application, were totally different from those at the time of his conviction and sentence.
5. The Application is opposed by the Respondent. In submissions dated 16<sup>th</sup> July 2025, the Respondent stated that the Applicant's case was heard and determined and was sentenced to 15 years imprisonment as provided by law. That the Applicant was dissatisfied with the decision and was now challenging the sentence on grounds that it did not take into account the pre-trial custody.



6. The Respondent submitted that the Applicant was granted bail during trial and his bond was thereafter cancelled making him spent some time in pre-trial custody. That he had also filed an appeal and a revision both of which were dismissed.
7. The Respondent further submitted that the court lacked jurisdiction to entertain the Application for the third time.
8. This court's revisionary jurisdiction is found in section 362 of the Criminal Procedure Code which provides:-

“362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

9. The Applicant was trial convicted and sentenced by a subordinate court. This court could therefore lawfully entertain his revision Application.
10. I have perused the record and as submitted by the Respondent, the Applicant filed Criminal Appeal No. E016 of 2020 which was heard and determined by Gitari J. in the judgement dated 25<sup>th</sup> November 2021, Gitari J. dismissed the appeal in its entirety.
11. On record also is a revision ruling issued by Gitari J. on 17<sup>th</sup> October 2024 in which she dismissed the Applicant's application.
12. I have come to the conclusion that the Applicant's application is not only res judicata but is also an invitation to this court to re-open and review the ruling of a court of equal and concurrent jurisdiction. I decline the invitation.
13. The Applicant's third attempt to review his sentence cannot be entertained by this court. In any case, and for the benefit of the Applicant, the sentence which he is serving is mandatory. The Supreme Court in the case of Julius Kitsao Manyeso v. Republic Petition No. E013 of 2024 [2025] KESC 16 KLR] held that sentences under the *Sexual Offences Act* remained mandatory until and unless Parliament amended the law. The Supreme Court stated as follows:-

(62) In the Muruatetu Directions, this court pronounced itself on the application of the ratio in the Muratetu case to other statues prescribing mandatory sentences as follows:-

10. It has been argued in justifying this state affairs, that, by paragraph 48 of the Judgment in this matter, or indeed the spirit of the Judgement as a whole, the court has outlawed all mandatory and minimum sentence provisions; and that although Muruatetu specifically dealt with the mandatory death sentence in respect of murder, the decision's expansive reasoning can be applied to other offenses that prescribe mandatory or minimum sentences. Far from it.”

....We therefore reiterate that, this court's decision in Muruatetu did not invalidate mandatory sentences or minimum sentences in the Penal Code, the *Sexual Offences Act* or any other statute.”



14. It should be apparent from the foregoing that Muruatetu cannot be the authority for stating that all provisions of the law prescribing mandatory or minimum sentences are inconsistent with the Constitution.” [underline mine]
15. It follows that the trial court in the present case was not in error when it imposed the mandatory sentence. The high court on appeal upheld the conviction and sentence and further rejected the Applicant’s earlier revision.

The Application is thus dismissed.

Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 28<sup>TH</sup> DAY OF APRIL, 2026.**

.....

**R. LAGAT-KORIR**

**JUDGE**

Ruling delivered in the presence of the Applicant acting in person and Ms Rukunga for the State; Muriuki (Court Assistant).

