



**Ratemo v Republic (Miscellaneous Criminal Application
E010 of 2025) [2025] KEHC 3940 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3940 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
MISCELLANEOUS CRIMINAL APPLICATION E010 OF 2025**

**EN MAINA, J
MARCH 27, 2025**

BETWEEN

CHARLES RATEMO APPLICANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Applicant was charged with the offence of defilement contrary to Section 8(1) as read together with 8 (2) of the [Sexual Offences Act](#) in Mavoko Chief Magistrate’s Court Sexual offence number 13 of 2016 and was found guilty and sentenced to life imprisonment on 25/05/2021.
2. Dissatisfied by this decision, the Applicant appealed to the High Court in Machakos High Court Criminal Appeal no E035 of 2021 that was heard and determined by Odunga J (as he then was) who in a judgment delivered on 14/07/2021 upheld the conviction but substituted the sentence with one of imprisonment for 20 years.
3. The Applicant has through the Notice of Motion dated 30/01/2025 now approached this court for revision of the sentence so as to take into account the period spent in remand custody. His prayer is that the sentence be ordered to run from 5th December 2016 when he was arrested.
4. The application was vehemently opposed by the prosecution on the ground that this court is functus officio as the sentence was the subject of appeal both here and in the Court of Appeal. Learned Prosecution Counsel Nyauncho described the application as an abuse of the court process.
5. I have had the opportunity and benefit of perusing the Judgment of Odunga J, as he then was, in the appeal preferred by the Applicant against conviction and sentence in Machakos HCCRA NO E035



of 2021 Charles Ratemo v Republic and I agree with Ms Nyauncho that this application is indeed but an abuse of the court process. Odunga J as he then was, stated-

“ 66. Having considered the mitigating circumstances and as the Appellant was a first offender, while I decline to interfere with the conviction, I hereby set aside the life sentence imposed upon him and substitute therefore 20 years in prison. The Appellant was arrested on 5th December, 2016 and was released on bond on 9th November, 2017. Accordingly, in computing his sentence, the said period is to be taken into account.”(underlining mine)

6. The period spent in remand was therefore taken into account by Odunga J as he then was. To reduce the sentence further would be tantamount to sitting on appeal against the judgment of a court of the same jurisdiction as mine and that is illegal. In the premises my finding is that the application is devoid of merit and it is dismissed.

It is hereby ordered.

JUDGMENT SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 27TH DAY OF MARCH, 2025.

E. N. MAINA

JUDGE

In the presence of:

Ms Kaburu for the state

Applicant – online from Kamiti Prison

C/A: Wambua

