



REPUBLIC OF KENYA



KENYA LAW
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**Kamau v Republic (Criminal Revision E149 of 2024)
[2025] KEHC 5704 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5704 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION E149 OF 2024
FN MUCHEMI, J
APRIL 30, 2025**

BETWEEN

PETER KARIUKI KAMAU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. In this application for determination is dated 3rd September 2024, the applicant seeks to have his sentence reviewed and the time spent in custody during the pendency of the trial be considered.
2. The applicant was convicted by Gatundu Chief Magistrate, in Criminal Sexual Offences Case No 623 of 2007 with the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the [Sexual Offences Act](#) and was sentenced to life imprisonment on 24th April 2008. The applicant appealed to the High Court in Nairobi but because there had been a fire outbreak at the chief Magistrates Court at Gatundu, his original file had been burnt in the inferno at the court building. Consequently, the High Court at Nairobi issued an order for a new trial since the applicant's file could not be traced for use during the hearing of the appeal.
3. The applicant was arraigned on 4th March 2011 for the retrial at the Chief Magistrates' Court at Gatundu and upon hearing of the case, he was sentenced on 20th March 2013 to serve life imprisonment. Being aggrieved by the judgment of the new trial court, the applicant filed an appeal against the said judgment at Nairobi vide High Court Criminal Appeal No 81 of 2013. The appeal was heard and determined. On 14th May 2015, the appellate judge in the High Court substituted the life sentence with a sentence of twenty years imprisonment to take effect from 20th March 2013. The applicant argues that the appellate court during sentencing failed to consider the time he spent in custody before the new trial and arrest since he was arrested on 16th August 2007.



4. The applicant then lodged an appeal at the Court of Appeal vide Criminal Appeal No 26 of 2022 which he withdrew under Rule 70 of the Court of Appeal Rules during the hearing on 28th February 2023. The applicant argues that he is satisfied with the sentence of twenty years but he has spent 17 years in custody from the date he was arrested. He is therefore seeking for consideration of the five (5) years and seven (7) months he had spent in custody before the new trial.
5. The respondent opposes the application on the premise that it is incompetent and an abuse of the court process. The respondent argues that the applicant having gone to the court of Appeal should not come go back to the High Court.

The Law

6. 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.
7. The applicant has come to this Honourable court by way of review provided for under Article 50 of the Constitution. It provides:-
 - (2) Every accused person has the right to a fair trial, which includes the right:-
 - (q) If convicted, to appeal to, or apply for review by a higher court as prescribed by law.
8. In the case of Samuel Kamau Macharia v KCB & 2 others, Civil Application No 2 of 2011, it was stated:-

“ A court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”
9. The applicant herein was convicted by Gatundu Chief Magistrate, in Criminal Sexual Offence Case No 623 of 2007 with the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the Sexual Offences Act and was sentenced to life imprisonment on 24th April 2008. The applicant appealed to the High Court in Nairobi but because there had been a fire outbreak at the Chief Magistrates Court at Gatundu, his original file was burnt in the court building. Consequently, the High Court at Nairobi issued an order for new trial since the applicant’s file could not be traced to be used during his appeal.
10. The applicant was arraigned on 4th March 2011 for a retrial at the Chief Magistrates’ Court at Gatundu and upon hearing of the case, he was sentenced on 20th March 2013 to serve life imprisonment. Being aggrieved by the judgment of the new trial, the applicant filed an appeal against the said judgment at Nairobi vide High Court Criminal Appeal No 81 of 2013. The appeal was heard, determined and on 14th May 2015, the appellate judge substituted his life sentence with a sentence of twenty years imprisonment to take effect from 20th March 2013.
11. It is important to mention that this application arose from Gatundu CM Criminal Case (S.O.) No 623 of 2007. This court requested for the original file to be forwarded from Gatundu for purpose of hearing this application. However, information was received through a letter from Gatundu Law Courts dated 3rd February 2025 to the effect that Gatundu Law Courts was completely burnt down in the year 2009 and that all court records including the file requested for were destroyed. In this scenario, this court will rely on the affidavit of the applicant regarding the facts of his application.



12. The Supreme Court has recently overturned several decisions of the Court of Appeal held that life imprisonment in defilement cases should be held to mean 30 years imprisonment. Similarly, the same court in Petition No 030 of 2023 restated its holding *Francis Muruatetu & another v Republic* No 15 of 2015 that the resentencing is only applicable to murder cases and that death sentence is still the lawful sentence upon conviction of the said offence in the robbery with violence. The same case applied to a convict in defilement. The Supreme Court was delivered on 2nd August 2024.
13. Under Article 163 (7) of the *Constitution*, this court is bound by decisions of the Supreme Court. For this reason, I can only state that the applicant benefited from the jurisprudence prevailing at the time his appeal was heard and his sentence reduced from life imprisonment to twenty (20) years imprisonment. If this were an appeal, enhancement of sentence would have been considered but not so in this application.
14. For the foregoing reasons, I find this application misconceived and incompetent. It is hereby struck out.
15. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 30TH DAY OF APRIL 2025.

**F. MUCHEMI
JUDGE**

