



REPUBLIC OF KENYA



KENYA LAW
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**Mwaura v Republic (Criminal Appeal 83 of 2023)
[2025] KEHC 5691 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5691 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL APPEAL 83 OF 2023
FN MUCHEMI, J
APRIL 30, 2025**

BETWEEN

JULIUS KINUTHIA MWAURA APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

Brief Facts

1. The appellant herein was charged with the offence of defilement contrary to Section 8(1) as read with 8(2) of the *Sexual Offences Act* No. 3 of 2006 in *Gatundu PM Criminal case No. 3003 of 2014*. He was convicted and sentenced to life imprisonment on 5th May 2016. Being aggrieved with the decision of the trial court, the appellant lodged an appeal against the conviction and sentence in High Court *Murang'a Criminal Appeal No. 49 of 2016*. The appellate court upheld the conviction and reviewed the sentence to twenty five years to run from the date of the sentence of the trial court. The appellate court rendered its judgment on 6th February 2020.
2. The appellant lodged another appeal at the High Court in *Kiambu being Criminal Appeal No. E036 of 2021* which was transferred to the present court upon establishment of the present court in August 2023. The appellant also filed a petition of appeal challenging the decision of the trial court in *Gatundu PM Criminal Case No. 3003 of 2014*. He then filed submissions seeking for orders of review by this court of the decision of the High Court at Murang'a as regards the sentence. The appellant argues that the current court has jurisdiction to revise orders of a court with concurrent jurisdiction. To support his contentions, the appellant relies on the cases of Criminal Revision No. 218 of 2015 *The Director of Prosecutions v Betty Njoki Mureithi t/a Blue Star Enterprises* and High Court of Malaysia in *Public Prosecutor v Muhari bin Mohd Jani & Another* [1996] 4LRC 728 at 734.



3. The respondent opposes the application and submits that the appellant was charged with the offence of defilement contrary to Section 8(1) as read with 8(2) of the *Sexual Offences Act* at Gatundu Principal Magistrate's Court Criminal Sexual Offences Case No. 3003 of 2014. He was found guilty and sentenced to life imprisonment on 5th May 2016. Being dissatisfied with the conviction and sentence of the trial court, the appellant lodged an appeal at *Murang'a High Court vide Criminal Appeal No. 49 of 2016* where the conviction was affirmed but the life sentence was set aside and substituted with a sentence of twenty five (25) years to be effective from the date of sentence of the trial court. The respondent submits that the appellant was dissatisfied with the decision at Murang'a High Court delivered on 6th February 2020 and sought review of the sentence by the current court. The respondent argues that the High Court at Murang'a has similar jurisdiction with the current court and the Murang'a High Court already pronounced itself on the issue of sentence and took into consideration the period spent in custody hence the present court has become *functus officio*.

The Law.

4. The applicant has come to the present court by way of an appeal which is entrenched in the Constitution 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.
5. 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.”
6. The appellant herein was charged with the offence of defilement contrary to Section 8(1) as read with 8(2) of the *Sexual Offences Act* No. 3 of 2006 in *Gatundu PM Criminal Sexual Offence Case No. 3003 of 2014*. He was convicted and sentenced to life imprisonment on 5th May 2016. Being aggrieved with the decision of the trial court, the appellant lodged an appeal against the conviction and sentence at the High Court in *Murang'a being Criminal Appeal No. 49 of 2016* and the appellate court upheld the conviction and reviewed the sentence to twenty-five years imprisonment to run from the date of the sentence of the trial court. The appellate court rendered its judgment on 6th February 2020 and took into consideration the period of four (4) months spent in custody during the pendency of the trial before the appellant was later released on bond.
7. The appellant lodged another appeal at the High Court in *Kiambu Criminal Appeal No. E036 of 2021* which was transferred to the present court upon gazetting of this High court. Appeal was filed in Kiambu on 6/02/2019 which was three (3) years after conviction by the Gatundu Court. The Murang'a High Court judgment was delivered by judge L. Mutende on 08/10/2019.
8. On this appeal the appellant challenged the decision of the trial court in Gatundu PM Criminal Case No. 3003 of 2014. In his confusion of multiple appeals and applications, the applicant has filed submissions seeking for the current court to revise the decision of the appellate court at Murang'a as regards the sentence. The said submissions and this 2nd High Court appeal are dead on arrival.
9. Article 50 (2) provides that a convicted person can file an appeal or an application for review but not both. The applicant's appeal at Murang'a High Court was fully heard and determined. The appeal was



successful in that his sentence of life imprisonment was set aside and substituted with twenty five (25) years imprisonment. The appellant is very much aware that jurisprudence has shifted from interfering with the sentences in sexual offences and terms of imprisonment are no longer available for a convict of such an offence. The Supreme Court case *Julius Kitsao Manyeso* SC Petition No E013 of 2024 overturned the decision of the Court of Appeal which had set aside life imprisonment sentence in a defilement case and reinstated life imprisonment sentence. The appellant is lucky that the respondent did not pursue enhancement of sentence for the reason that another High Court had already dealt conclusively with his appeal before the Supreme Court turned tables on jurisprudence.

10. The appellant is trying a second bite on his cherry and wasting the precious time of this court.
11. I find that this appeal is misconceived, incompetent and vexatious. It is hereby struck out.
12. It is hereby so ordered.

**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 30TH DAY
APRIL 2025.**

F. MUCHEMI

JUDGE

