



**Kituko v Republic (Criminal Revision E129 of 2024)
[2025] KEHC 11733 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11733 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION E129 OF 2024
FN MUCHEMI, J
JULY 31, 2025**

BETWEEN

STEPHEN KISILU KITUKO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Brief Facts

1. The application for determination is undated in which the applicant seeks to have his sentence reviewed under Section 333(2) of the Criminal Procedure Code.
2. The applicant states that the he was convicted by Thika Chief Magistrate, in Criminal Case No. 3169 of 2011 with the offence of defilement contrary to Section 8(1) as read with 8(2) of the *Sexual Offences Act* No. 3 of 2006 and was sentenced to serve twenty (20) years imprisonment. The applicant lodged an appeal at Kiambu High Court Criminal Appeal No. 103 of 2016 which was dismissed on 12th June 2017. The applicant filed a second appeal in the Court of Appeal in Nairobi being Criminal Appeal No. 10 of 2019 and dismissed the appeal on 24th July 2020.
3. The applicant herein seeks for review on sentencing and asks the court to invoke section 333(2) of the Criminal Procedure Code and consider the period he served in remand custody pending the hearing and disposal of his case. The applicant states that he was arrested on 1st July 2011 and sentenced on 14th September 2012 which amounts to 1 year and 2 months that the trial magistrate failed to consider during sentencing.
4. In opposition to the application, the respondent filed Grounds of Opposition and submissions dated 23rd July 2025 and states that recent decisions of the Supreme Court on defilement cases have held that life imprisonment is legal and not in contravention of *the constitution*. The respondent states that the applicant already exhausted his appeal options and thus he cannot come back again for revision of



his sentence. Furthermore, having already gone to the Court of Appeal, the applicant cannot ask the current court to overturn a decision of the superior court.

5. The respondent states that the applicant is just testing the waters and trying his luck thus forum shopping which actions should be discouraged to deter other potential applicants with similar applications.

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 (2) (q) of *the Constitution* which 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 vs 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 of the offence of defilement in Thika CM Criminal Case No. 3169 of 2011 and sentenced to serve 20 years imprisonment. He appealed to High Court Kiambu in Criminal Appeal No. 103 of 2016 which appeal was dismissed on 12th June 2017. The applicant then filed a second appeal in the Court of Appeal Nairobi being Criminal Appeal No. 10 of 2019 which was dismissed on 24th July 2020. In upholding the sentence, the Court of Appeal took into consideration that the sentence was lawful and appropriate in the circumstances as the applicant took advantage of the minor who was mentally challenged and defiled her on her way to school yet it was not the first time.
10. 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 and went through two appeals including the 2nd one in the Court of Appeal. Under Article 50(2) (q) the applicant has exhausted his constitutional rights. Litigation must come to an end. The law did envisage a situation where a party would go to court several times seeking remedies on the same matter as it addressed the matter in Article 50 (2).
11. It is important to state that the applicant having lodged an appeal at the Court of Appeal, cannot come back to this court to seek resentencing as this court cannot review the orders of the Court of Appeal.
12. Accordingly, the application dated 8th July 2024 incompetent is hereby struck out with no orders as to costs.
13. It is hereby so ordered.



RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 31ST DAY OF JULY 2025.

F. MUCHEMI

JUDGE

