



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ndungu v Republic (Miscellaneous Criminal Application  
E021 of 2025) [2025] KEHC 11422 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11422 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS CRIMINAL APPLICATION E021 OF 2025**

**HI ONG'UDI, J**

**JULY 31, 2025**

**BETWEEN**

**JOSEPH MWANGI NDUNGU ALIAS BOI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. Joseph Mwangi Ndungu hereinafter referred to as the applicant was charged with the offence of defilement contrary to section 8(1) as read with section 8(2) of the [Sexual Offences Act](#) No. 3 of 2006. This was vide Molo Chief Magistrate's Court Criminal S. O Case No. 80 of 2019. The case was heard and he was found guilty, convicted and sentenced to life imprisonment on 13<sup>th</sup> August, 2020 by Hon E. Soita, Resident Magistrate.
2. Being dissatisfied with the Judgment he filed an appeal against both conviction and sentence vide Nakuru High Court Criminal Appeal No. 37 of 2020. The appeal was heard by Chemitei J who in the Judgment delivered on 17<sup>th</sup> March, 2022 upheld the conviction. He however set aside the life imprisonment sentence and substituted it with 25 years' imprisonment.
3. The Applicant in the present application is asking this court to revise the sentence meted out on him. He is relying on section 333(2) of [Criminal Procedure Code](#) to support his prayer.
4. The application was argued orally. The applicant submitted that he has a young family which is suffering. That he was not satisfied with the sentence of 25 years imprisonment. He thus asked the court to reduce his sentence and set him free.
5. M/s Okok counsel for the state opposed the application. She gave a detailed account of what happened in this case right from the Magistrate's court upto now. Counsel submitted that on Appeal Justice Chemitei ordered that the sentence of 25 years was to run from the date of the appellant's arraignment in court which was 27<sup>th</sup> June, 2019.



6. It is therefore clear that the Applicant's issues on conviction and sentence were dealt with in the Nakuru High Court Criminal Appeal No. 37 of 2020. The Applicant cannot turn around and seek further reduction of his sentence in the same High Court that heard his appeal.
7. The applicant's only available option is to move to the Court of Appeal. This court is functus officio.
8. I therefore find no merit in the present application which I hereby dismiss.
9. Orders accordingly

**DELIVERED, DATE, AND SIGNED IN OPEN COURT AT NAKURU.**

**DELIVERED, DATED AND SIGNED THIS 31<sup>ST</sup> DAY OF JULY, 2025 IN OPEN COURT AT NAKURU.**

**H. I. ONG'UDI**

**JUDGE**

