



**Kiruja v Republic (Miscellaneous Criminal Application  
E012 of 2024) [2025] KEHC 11590 (KLR) (29 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11590 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
MISCELLANEOUS CRIMINAL APPLICATION E012 OF 2024**

**RL KORIR, J**

**JULY 29, 2025**

**BETWEEN**

**MARTIN MUTUMA KIRUJA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged with the offence of defilement contrary to Section 8(1) as read with Section 8(4) of the *Sexual Offences Act*. The victim of this offence was one M.K. a child aged 17 years. At the conclusion of the trial, the Applicant was convicted and sentenced to serve 15 years' imprisonment by Hon. Njoki Kahara Senior Resident Magistrate on 19<sup>th</sup> September 2022.
2. The Applicant appealed to this court. This court (differently constituted) heard and dismissed the appeal as it was found to lack merit.
3. Undeterred in seeking freedom or a lenient sentence, the Applicant filed the present Application for sentence review. His Application dated 4<sup>th</sup> February, 2025 asks the court to give him a second chance in life and reduce the 15 years' sentence, to a lesser sentence taking into consideration the period he spent in pre-trial custody.
4. At the hearing of the Application on 16<sup>th</sup> July 2025, the Applicant stated that he would rely on this written submissions.
5. The Applicant submitted that he had no intention of appealing to the Court of Appeal and only wished to have his sentence reduced. He stated that he had already served a third of his sentence was reformed. He placed reliance on the case of KNN Vs. Republic [2020] eKLR for the proposition that the court had discretion to consider whether the circumstances of an Accused had changed for better or worse during the time of incarceration.



6. The Application is opposed by the Respondent. In their submissions dated 28<sup>th</sup> April, 2025, the Respondent identified the issue whether this court could interfere with a sentence already upheld on appeal.
7. The Respondent submitted that sentencing was at the discretion of the trial court and an appellate court should be slow to interfere with such discretion. Further that this court had already exhausted its jurisdiction when it heard and determined the Applicant's appeal. That the court was now functus officio.

### **Analysis and Determination**

8. This Miscellaneous Application was framed as a sentence review. As admitted by both parties, the Applicant was tried and sentenced at the Magistrates' Court. He was dissatisfied with the conviction and sentence and appealed to this court. His Appeal was heard and determined by Gitari J, a court of equal and concurrent jurisdiction.
9. I decline the invitation to review the judgement of Gitari J. For the benefit of the Applicant however, I will point out that he was sentenced to a minimum sentence under Section 8(4) of the *Sexual Offences Act*. I have also taken the liberty to look at the trial record. It shows that the Applicant took plea on 18<sup>th</sup> October, 2019 and was granted surety bond of Kshs.100,000/-. It is not true therefore that he was in pre-trial custody.
10. I also observe from the judgement that the Applicant and the complainant in the case had a long sexual relationship before he was charged and convicted. His recourse for the second chance he craves lies with the Court of Appeal.
11. The Application is dismissed for lack of legal basis.

Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 29<sup>TH</sup> DAY OF JULY, 2025.**

.....

**R. LAGAT-KORIR**

**JUDGE**

Ruling delivered in the presence of the Applicant acting in person and Ms Rukunga for the State; Muriuki (Court Assistant).

