



BCT v Republic (Miscellaneous Criminal Application E038 of 2024) [2024] KEHC 9699 (KLR) (30 July 2024) (Ruling)

Neutral citation: [2024] KEHC 9699 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
MISCELLANEOUS CRIMINAL APPLICATION E038 OF 2024**

RB NGETICH, J

JULY 30, 2024

BETWEEN

BCT APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant BCT was charged with the offence of incest by male contrary to section 20(1) of the [Sexual offences Act](#) No.3 of 2006. He was found guilty as charged, convicted and sentenced to serve 15 years imprisonment. He appealed to the High where the court considered the period served in prison and ordered that the sentence to run from the date of arrest.
2. The applicant has now approached this court *vide* a notice of motion application brought under the provisions of Articles 22(1), 23(1),25(c), 27(1)(4), 50(2)(p)(q), 159(2) and 165(3) of [the Constitution](#) of Kenya,2010, [probation of offenders Act](#) Cap 64 Laws of Kenya and the [Community service orders Act](#) Cap 10 laws of Kenya.
3. The applicant now seeks sentence review on ground that the sentence imposed was harsh and excessive in regard to the facts and circumstances of the offence. He prays for probation sentence or community service order in the interest of justice. The Applicant avers that this court is seized of competent jurisdiction under Article 165(3)(b) of [the constitution](#) of Kenya to hear and determine this matter.
4. When the matter came up for hearing on the 11th of July,2024, the applicant stated that he has been in prison for 7 years and is now remaining with 3 years to complete the sentence and while in prison, he has trained in biblical teachings and also carpentry which he is to complete training in October this year. He stated that he is 52 years old, married and blessed with 6 children.
5. The prosecution counsel Ms. Ratemo urged the court to call for social inquiry to be done and the report to be filed. She stated that they will rely on the sentiments in the report.



Social Inquiry Report

6. From the report, the applicant was married with 6 children but his wife left him with the children. The family of the victim requested for time so as to talk as a family including the victim and when they gave feedback, they indicated that as the children of the Applicant, they had resolved to forgive him and they are not opposed to his early release so as to serve the remainder of his sentence on a non-custodial sentence. They are ready to receive him and assist in his resettlement and his reintegration.
7. Social inquiry shows that the Applicant and his ex-wife had marital issues including issues of extra-marital affairs leading to their separation. While in prison, the Applicant has undertaken Carpentry course and he has already completed grade 3. He is also involved in church activities and has obtained a certificate. The Applicant admits to occasional use of alcohol before his arrest but he adds that he has never abused any illegal drugs. He is of sound health and is capable of engaging in manual work in the event he is released to serve a community service order.
8. The Applicant says he has reformed and is ready to be a law-abiding citizen who will contribute to the community. He states that he wishes to re-unite with his children especially considering that their mother does not support them. He has been visited while in prison by various family members including his children and he has been in communication with the victim who is his daughter and he therefore prays that he be released to serve the remainder of his sentence as a non-custodial sentence. He adds that upon his release, he will engage in rearing of cattle and poultry as well as practice the carpentry skills he has learnt while in prison so as to earn a living for himself and his children.
9. The victim is currently in grade 6 in a boarding school in Nakuru. She goes home to her family when schools close. She indicated that she has no problem with the Applicant, that she has forgiven him and is not opposed to his early release from prison. She added that her focus at the moment is her education.
10. The local administration was available for interview. The area chief indicated that the Applicant was of good conduct prior to the incident. The community was shocked initially but since the Applicant was taken through trial and eventually incarcerated, the community has no problem with him. He confirmed that the children of the Applicant are doing well albeit with occasional financial struggles but the community has always been ready to assist them. He said they are not opposed to the early release of the Applicant so that he can serve the remainder of his sentence out of prison.
11. The prison authority on their part indicated that the Applicant has been of good behavior and is frequently visited by his children and other family members which shows he has strong family ties.
12. The report indicate that the applicant spent 1 year and 3 months in remand during trial and is now remaining with 4 years so as to complete his prison sentence. The probation officer is of the view that strong family ties the applicant enjoys would be of great help in his reintegration.
13. The applicant's cousin who was interviewed prayed for his release stating if released early, the inmate will assist in the upkeep and wellbeing of his young children using the skills he has learnt in prison. The probation officer's view is that the applicant is suitable for community-based rehabilitation and he recommended 3 years' probation sentence.

Determination

14. I have considered the application herein. It invokes the revisional jurisdiction of this court which gives the court powers, in appropriate cases, to review and vary any orders, decision or sentence passed by the trial court if the court was satisfied that the impugned order, decision or sentence was illegal or was a product of an error or impropriety on the part of the trial court. If the court was so satisfied, the



law mandated it to make appropriate orders to correct the impugned order, decision or sentence and align it with the law. The above is the import of Section 362 as read with Section 364 of the Criminal Procedure Code.

15. In this case, the applicant has maintained that he is remorseful, reformed since he has been in prison for 7 years now. He stated that while in prison he has done carpentry and learnt several religious courses. He prays to be allowed to complete the remaining period of sentence while in the community.

16. I take note of the fact that the victim, his family and the community have since forgiven the applicant and they do not oppose the application for sentence review. The local administration is also not opposed to community-based rehabilitation. The probation officer's opinion is that the Applicant is suitable for a probation sentence for a period of 3 years, subject to court's discretion.

17. The objectives of sentencing are outlined in the 2023 Judiciary of Kenya Sentencing Policy Guidelines at page 15, paragraph 4.1 as follows:

Retribution: To punish the offender for his/her criminal conduct in a just manner.

Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.

Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.

Community protection: To protect the community by incapacitating the offender.

Denunciation: To communicate the community's condemnation of the criminal conduct.”

18. In view of the above, I take note of the fact that the applicant has acquired life skills while in prison and take note of the fact that he has been in prison for 7 years now. I also take into consideration the fact that the local administration, the victim as well as his family do not oppose the application for sentence review and are willing to support him and to facilitate his community rehabilitation. I am therefore inclined to allow the application for review of the sentence.

19. Final orders: -

1. Application for review of trial court sentence is hereby allowed.
2. The Applicant to serve 3 years' probation sentence for the remaining period of sentence.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 30TH DAY OF JULY 2024.

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RACHEL NGETICH
JUDGE

