



DKK v Republic (Miscellaneous Criminal Application E025 of 2024) [2024] KEHC 9809 (KLR) (25 July 2024) (Ruling)

Neutral citation: [2024] KEHC 9809 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
MISCELLANEOUS CRIMINAL APPLICATION E025 OF 2024**

RB NGETICH, J

JULY 25, 2024

BETWEEN

DKK APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with the offence of Indecent Act contrary to Section 11(1) of the [Sexual Offences Act](#) No. 3 of 2006, convicted and sentenced to serve 10 years imprisonment.
2. The applicant has now approached this court vide an application filed in court on the 26th May, 2024. The applicant in his present application before court is seeking to be allowed to serve remaining period of sentence under probation pursuant to the provisions of Section 4 of the [Probation of Offenders Act](#). The application is supported by the annexed affidavit of the Applicant.
3. The Applicant avers that he was apprehended on the 27th December, 2018 and charged with the offence of Indecent Act contrary to Section 11(1) of the [Sexual Offences Act](#) No.3 of 2006. After hearing, he was convicted and sentenced to serve 10 years imprisonment on 4th April, 2019.
4. The applicant states that he has reformed, is repentant and while in prison, he has undergone several rehabilitation programs and obtained Diploma in Theology and a Grade 3 certificate in Carpentry. He avers that his family has been suffering owing to his incarceration as he was the sole bread winner and he urges this court to allow this application so that he may go to salvage the situation the family is in.
5. When the matter came up for hearing on the 8th May, 2024, the applicant informed court that he has been in prison for 5 years one month and is now remaining with 1 year and 7 months to serve which he prays to be allowed to serve on probation.



6. The prosecution counsel Ms. Ratemo urged this court to call for social inquiry and the accused's certificates and prison's recommendation letter to be filed.

Social Inquiry Report

7. Social Inquiry Report was filed on the 6th May, 2024. From the report, the Applicant who is now 42 years old. He dropped from school in 1992 while in class 4 due to personal reasons. In the year 1993 he stayed at home and did farming and casual jobs within the community. In the year 2000 to 2014, he relocated to Nakuru where he worked as farm hand. He returned home in the year 2015 and started practicing farming at the family land. He indicates that he had married but separated with his wife due to alcoholism. They were blessed with two children who are currently under the custody of his mother-in-Law. He stated that last time he had communication with the mother-in-law was in the year 2020.
8. The applicant's parents and one of his siblings are not opposed to the applicant's early release on ground that it will be of great help to him and the family at large as he will be given an opportunity to restart his life afresh. The Applicant's mother and the sibling are willing to facilitate his community rehabilitation to ensure that he is fully reintegrated within the community. The mother added that he is willing to facilitate and ensure he receives basic needs once released back to the community. Social inquiry reveals the victim was their immediate neighbor and they have been relating very well with them.
9. The inmate has been in custody for five years and two months. During this period, he was able to do grade three examination in carpentry and learnt several religious courses such as Gospel of John, Jesus Alive, Safari ya Mfungwa and Diploma in FCM. Home report indicates that the inmate found the victim along the road walking where he pulled her and defiled her. He attributes the offence to influence of alcohol.
10. The inmate prays for forgiveness and accepts the offence as charged. He appreciates the period he has been in custody as it was enabled him acquire a skill in carpentry which will help him earn a living if released. He prays for non-custodial sentence so that he can re-start his life and reunite with his children.
11. The victim's father indicated that the victim passed on in 2019 at the age of 25 years. He stated that they had reconciled with the applicant's family way back in the year 2018. He is not opposed to the applicant's early release or being granted community rehabilitation sentence. He added that they have been living in peace with the Applicant's family.
12. The local administration together with the village elder are not opposed to the applicant serving non-custodial on ground that the two families who are neighbors reconciled in the year 2018 and they are willing to facilitate community rehabilitation.
13. The probation officer's opinion is that in view of the positive sentiments from the community, his family and the victim's father, the Applicant is suitable for a probation sentence.

Determination

14. I have considered the application. I find that the application 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 mandates 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. 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."

16. In view of the above, I take note of the fact that the applicant herein was sentenced to 10 years imprisonment. He has served 5 years 2 months and is now remaining with 1 year 7 months. I take note of the fact that the applicant took advantage of opportunities available in prison and trained in carpentry and learnt several religious courses. He will be more useful to the community if released as he has learnt skills which will be of help to his family and the community around him. I also take note of the fact that the victim's family and applicant's family have reconciled and are living together peacefully as confirmed by local administration and village elder. I am therefore inclined to revise the applicant's sentence and allow him to serve noncustodial sentence for the remaining period of sentence

Final Orders: -

17.

1. Application to review applicant's sentence is hereby allowed.
2. The applicant to serve probation sentence for the remaining period of sentence-imposed by trial court.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 25TH DAY OF JULY 2024.

RACHEL NGETICH

JUDGE

In the presence of:

Ms. Ratemo for State.

Applicant Present.

Elvis & Komen – Court Assistants.

