



**Cherop v Republic (Criminal Revision E034 of 2024)  
[2024] KEHC 16870 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 16870 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL REVISION E034 OF 2024  
RB NGETICH, J  
OCTOBER 31, 2024**

**BETWEEN**

**ALPHAEUS CHEROP ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant Alphaeus Cherop was charged with the offence of defilement contrary to section 8(1) as read with section 8(3) of the [Sexual offences Act](#). The particulars were that the applicant on the 14<sup>th</sup> day of March, 2013 at Baringo District Baringo County did intentionally and unlawfully caused his penis to penetrate the vagina of JK a child aged 10 years in contravention of the said Act. After trial, the trial court found guilty the applicant guilty, convicted and sentenced him to serve 20 years imprisonment.
2. The applicant has now approached this court under the provisions of Articles 165(3) (a)(b), 50(2)(q), 27, 28 and sections 326 and 216 of the [Criminal procedure Code](#) seeking to serve probation sentence for the remaining period under Section 4(i)a and b of the [probation offenders Act](#) cap 64 laws of Kenya that allows probation terms on offenders.
3. The applicant is seeking orders for reduction of his sentence to a non-custodial sentence. He is asking this court to be pleased to consider the provisions of Article 165(3) a, b, d and 258(1) of the [Constitution](#) of Kenya, 2010.
4. The applicant avers in his application that he has reformed, rehabilitated and ready for re-integration back to the society. He states that he is a first offender and begs for leniency from the court.
5. When the matter came up for hearing on the 29<sup>th</sup> July, 2024, the applicant informed the court that his prayer is for probation sentence stating that he was sentenced to serve 20 years imprisonment. He indicated that he filed an appeal which was dismissed in the year 2018. He stated that he is remaining with 3 years to serve having been in prison for nine years.



6. This court called for a social inquiry report to be filed and the matter to be mentioned on the 2<sup>nd</sup> September, 2024. The report was filed as directed and the prosecution informed the court that they wish to rely on the report.

### **Social Inquiry Report**

7. The Applicant is aged 33 years old. He sat for KCSE at Kabarnet High School in the year 2010 and scored a mean grade of C-. He did not proceed with his education due to financial constraint at the family level. He started doing casual jobs in the year 2011 within the community. He is married with one child aged 10 years. The Applicant indicates that the wife is currently remarried elsewhere and has two more children. The Applicant has been in prison for 9 years 7 months and has learnt skill in tie and dye, packaging and branding, Entrepreneurship and marketing, yoghurt making, soap making, Diploma in biblical studies and certificate in organic gardening.
8. He started doing casual jobs in the year 2011 within the community. The Applicant's mother appreciates the period he has been in custody knowing that his son has changed in character and acquired a skill in farming, soap making, yoghurt making and Tie and dye and is willing to welcome him back home at Mochongoi and assist in reintegration and supervision within the community. The applicant's brother and former wife are also willing to assist the applicant in reintegration into the community.
9. Brief circumstances of the case before the trial court are that the Applicant was a motor cycle rider who used to transport pupils in the morning and evening. On the material day, he was carrying his brother as a passenger in the motorcycle when they met the victim and they forcefully carried her towards the bush. The Applicant defiled her while the brother run away. The inmate indicates that he committed the offence under the influence of alcohol.
10. The Applicant was sentenced to 20 years imprisonment and is remaining with 2 years to complete his sentence. He prays for non-custodial sentence for the remaining period of sentence so as to assist his mother with farm work.
11. The victim is a currently a college student within Nakuru town pursuing a diploma course in fashion and design. Her mother indicated that she does not oppose non-custodial sentence for the remaining period of sentence as she believes that he has been fully rehabilitated. She further stated that during school holiday, the victim normally stays with her at Mogotio and she rarely goes to [Particulars Withheld] where the offence took place.
12. The local administration indicated that the Applicant is well known to him and is aware that upon his release, the Applicant will relocate to Mochongoi where the mother is currently staying. He is not opposed to the Applicant serving community rehabilitation sentence.

### **Determination**

13. The application herein 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*.
14. 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.”

15. From the social inquiry report the victim's family, local administration and the community are not opposed to applicant's being released to serve non-custodial sentence for the period of sentence remaining. The Applicant took advantage of opportunities available in prison and learnt several skills which will assist him earn a living if released back to the community. In my view, the Applicant will be more beneficial to the community to the community while serving sentence within the community other than while confined in prison facility. In view of the above, I am inclined to revise the sentence remaining herein to non-custodial sentence.

**Final Orders: -**

16. Accused to serve probation sentence for the remaining period of sentence imposed by the trial court.

**RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 31<sup>ST</sup> DAY OF OCTOBER 2024.**

.....  
**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

Elvis Court Assistant.

Ms. Ratemo for State.

Applicant present.

