



**Pkemoi v Republic (Miscellaneous Criminal Application
E031 of 2024) [2024] KEHC 13594 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13594 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
MISCELLANEOUS CRIMINAL APPLICATION E031 OF 2024**

**RB NGETICH, J
OCTOBER 31, 2024**

BETWEEN

LOKAMOTON PKEMOI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Lokomoton Pkemoi was charged with the offence of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual offences Act*. The particulars were that the accused on the 4th day of October, 2019 at [particulars withheld] within Baringo County, intentionally caused his genital organ (penis) to penetrate the genital organ (vagina) of CN a child aged 6 years.
2. By judgment delivered on 15th May 2020 by Hon. Biwott, the Applicant was sentenced to serve 10 years imprisonment for the offence herein. He filed appeal vide Kabarnet High court criminal appeal no. 15 of 2020 where the court allowed the period he was in remand from the date of arrest be computed in the sentence imposed by the trial court.
3. The applicant has now approached this court vide the application herein brought under the provisions of Articles 22(1) and Articles 50(2)(p)(q) of the *Constitution of Kenya* 2010 seeking review of sentence. He prays for a non-custodial sentence as provided under section 4 of the *probation of offenders Act*. He urges this court to consider the provisions of the *Sentencing Policy Guidelines* and invoke the provisions of Articles 165(3) a, b and d and Articles 258 (1) of the *Constitution of Kenya*, 2010.
4. The applicants aver in his application that he is a first offender, is remorseful, repentant, has reformed and has learnt from his incarceration in prison to take responsibility of his actions. He states that he has a young family who solely depend on him for their survival.
5. When the matter came up for hearing on the 1st October, 2024, the prosecution informed the court that they had been served with a copy of the social inquiry report and they rely on the report.



Social Inquiry Report

6. From the report, the Applicant did not attend any school for formal education. He was the one who used to take care of the family cattle while the other children went to school. Within the community, he used to engage in herding livestock and small-scale subsistence farming. The family are willing to receive the Applicant back into the community and they pray that this court releases him to serve a non-Custodial sentence.
7. The Applicant further states that he has been in prison for a total of 5 years now including remand period. He prays for non-custodial sentence from the remaining sentence to allow him rebuild his life considering that he is still very young. Efforts to trace the victim and her mother were futile on ground that the father of the victim who was the only person with a mobile phone in the family was arrested and is currently in custody and after his arrest the victim and her mother moved to a different location.
8. The local administrator indicated that the Applicant was well known to him prior to his arrest and he was of good conduct. That he was a herder who interacted well with members of the community but he used to consume alcohol. He further stated that the community do not have an issue with the Applicant and the community would be willing to welcome him back home.
9. The local administration further informed the Probation Officer that the victim moved to Maron in Ribkwo which is another location in Tiaty West sub-county and that the victim lives with her mother. He also confirmed that the victim's father was arrested and he was the one who had a mobile phone in the family thus reaching the victim and her mother at the moment is difficult.
10. From the report, the applicant's expected date of release is 10th of June 2026. He therefore has 1 year and 8 months to the completion of his sentence. His family through his brother showed willingness to receive the Applicant and participate in his reintegration of the inmate back into the community.

Determination

11. 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*.
12. From the social inquiry report, the Applicant has been in prison for 5 years now. He is remorseful and prays to be allowed to serve non-custodial sentence for the remaining period of sentence. He was sentenced to serve 10 years imprisonment and he is now remaining with 1 Year and 8 months to serve.
13. 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.”

14. From the local administration, the applicant was of good conduct prior to the offence herein and the community are willing to accept him back. The Applicant's family are also willing to assist the Applicant reintegrate back to the community. In view of the above, I am inclined to allow the applicant's application for review of sentence.

15. Final Orders:

The applicant 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 31ST DAY OF OCTOBER 2024.

RACHEL NGETICH

JUDGE

In the presence of:

Elvis – Court Assistant.

Ms. Ratemo Present.

Applicant present.

