



**Wekesa v Republic (Miscellaneous Criminal Application  
E046 of 2024) [2025] KEHC 3124 (KLR) (5 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3124 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
MISCELLANEOUS CRIMINAL APPLICATION E046 OF 2024**

**RB NGETICH, J**

**MARCH 5, 2025**

**BETWEEN**

**JOSEPH WEKESA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant Joseph Wekesa was charged with the offence of defilement contrary to Section 8(1) as read with Section 8(4) of the [Sexual Offences Act](#). The particulars of the offence were that the Applicant on the diverse dates between 9<sup>th</sup> November,2016 and 11<sup>th</sup> November,2016 in Baringo Central Sub-County within Baringo County did unlawfully and intentionally cause his penis to penetrate the vagina of FJK a girl aged 15 years in contravention of the Act. Upon hearing and determination of the suit, the applicant was convicted and sentenced to 15 years imprisonment.
2. The Applicant has now approached this court through an application brought under the provisions of Article 22(1) of the [Constitution](#), Section 3(3), 4, 5(b) and the second schedule section 12 (2) (q) and 8(1) of the [Community Service Order Act](#) seeking review of the remaining sentence to probation sentence. When the matter came up before court on the 14<sup>th</sup> November,2024, the applicant informed court he has been in in prison for 8 ½ years and he is now reformed. The court called for a social inquiry report which was filed on the 6<sup>th</sup> February,2025.

**Social Inquiry Report**

3. From the report, the applicant dropped out of school in class 3 and assisted his parents in farm work until when he attained the age of majority. In 2015, the Applicant relocated to Nairobi where he worked as a casual worker. In 2016, he moved to Tenges in Baringo county where he was employed as a casual worker and that is where he committed the offence. He is single with no parental responsibility. His siblings have been visiting him in prison and they have been very supportive. While in prison,



the applicant has done several courses which include masonry and training in theology. He intends to utilize the gained skills for his economic empowerment upon release from prison.

4. The applicant informed court that he has less than 3 years remaining to complete his sentence. He says he is single and if his request is granted, he will be able to reorganize his life, marry and have a family.
5. The applicant's father indicated that they have been in contact with him while in prison. That at the time of arrest, conviction and sentencing, he was single and he depended on the family. All the family members are willing to accept the applicant back and help him resettle. They stated that his house collapsed and the family members are now preparing to have another house built for him in readiness for his release. They are also ready to assist him utilize the skills learnt to make him economically stable.
6. The victim at the time of the offence was 15 years of age. She is now an adult aged about 23 years but she could not be traced for her sentiments.
7. The village elder for Narulingo was contacted through his father and according to local administration, the Applicant was known in the area as a law-abiding citizen until the time he was arrested for this offence. He says the applicant was greatly involved in youth activities both social and economic and the community considered him as an asset. Some of the community members interviewed are not opposed to his release as he is not a threat to the community peace. The local leaders are ready to assist him resettle and be reintegrated back into the community.
8. The area Assistant Chief is willing to assist in supervision to ensure that he abides by the court orders in case he is released. They are also ready to assist him in locating qualified persons where he will be attached in order to gain experience and utilize the skills gained. The officer indicates that considering the community is receptive and the Applicant is said to be reformed, they recommend his remaining sentence be substituted with probation sentence.

### **Response By State**

9. On the 11<sup>th</sup> February, 2025, the prosecution counsel Ms. Bartilol submitted that she was opposed to the application for review of sentence on ground that the offence committed is serious. She further submitted that the sentence imposed against the Applicant is lawful and there is no change in the circumstances. She stated that the offence is rampant where the Applicant comes from and there is need for deterrent sentence. She prayed that the application for review of sentence be dismissed.

### **Analysis And Determination**

10. The applicant herein urges this court to exercise supervisory powers under Article 165(6) of the Constitution and revise his sentence to allow him serve noncustodial sentence for the remaining period of sentence. The applicant was sentenced to 15 years imprisonment for the offence of defilement. He has served 8 years in prison and at the time of filing this application, he was remaining with 2 years 5 months.
11. I have considered sentiments by the local administration and applicant's family. I also take note of the fact that the applicant has served for a period of 8 years in prison and has learnt masonry. I take note of the fact that the local administration and the community are not opposed to applicant being released to serve non-custodial sentence for the remaining period of sentence. The applicant also stated that he is remorseful, and has fully reformed. In view of the above, I find it appropriate to revise the applicant's sentence.
12. Final Orders:-



1. Application for review is allowed.
2. Applicant to serve probation sentence for the remaining period of sentence imposed by the trial court.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 5<sup>TH</sup> DAY OF MARCH 2025.**

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of:

\* Ms. Bartilol for State.

\* Applicant present.

\* Elvis/Momanyi, Court Assistants.

