



**Waraya v Republic (Miscellaneous Criminal Application
E014 of 2025) [2025] KEHC 4398 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4398 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION E014 OF 2025**

DK KEMEL, J

APRIL 8, 2025

BETWEEN

PETER OCHIENG WARAYA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein has filed a Notice of Motion dated 17/1/2024 and filed on 17/1/2025 seeking for an order that this court reviews the sentence of 10 years' imprisonment imposed by the Lower Court vide Bondo Criminal Case No 44/2022 to a less severe sentence. The application is supported by the Applicant's affidavit sworn on even date.
2. The Applicant's gravamen is inter alia; that he was arrested at the age of twenty-four (24) years; that he is the first born in a family of eight children without parents who have all died; that he is the sole bread winner for his family; that he is suffering from health complications which cannot be managed in prison; that he is remorseful.
3. The Respondent did not file a response to the application as the learned counsel indicated that he leaves the matter to the court to make orders as appropriate.
4. I have considered the Applicant's application aforesaid and the averments in the affidavit in support. The issue for determination is whether the application has merit.
5. It is noted that the Applicant had been charged before Bondo Law Courts vide Criminal Case (S.O) No E044/2022 for the offence of attempted defilement contrary to Section 9(1) as read with Section 9(2) of the *Sexual Offences Act* No 3 of 2006. The particulars were that on the 22/9/2022 at about 1500hrs in Bondo Sub-County willfully and unlawfully intentionally attempted to cause your penis to penetrate the vagina of LA a child a aged 16 years.



6. The Applicant also faced an alternative charge of committing an indecent act with a child contrary to Section 11(1) of the [Sexual Offences Act](#) No 3 of 2006. The particulars were that on 22/9/2022 at about 1500hrs in Bondo Sub-County within Siaya County willfully and unlawfully intentionally caused your finger to touch the vagina of LA a child aged 16 years.
7. After a full trial wherein the Respondent called five(5) witnesses while the Applicant called three(3) witnesses, the Applicant was found guilty of the main count and sentenced to serve ten (10) years' imprisonment.
8. It appears that the Applicant has opted not to lodge an appeal against both conviction and sentence but has decided to approach this court for a sentence review.
9. Under Section 9(2) of the [Sexual Offences Act](#) No 3 of 2006, a person who commits an offence of attempted defilement with a child is liable upon conviction to imprisonment for a term of not less than ten (10) years. I find this is the minimum sentence possible in law since an offender could as well be sentenced to periods of more than ten (10) years if circumstances permit. The fact that the Applicant has opted not to challenge his conviction, the impression given is that he is okay with it. The Applicant wants this court to interfere with the sentence. The trial court before imposing the sentence, had called for a pre - sentence report. The same was availed and which indicated that the Applicant was someone who is not remorseful and that his conduct in molesting the minor has not been taken well by the community. The report also indicated that there are rampant cases of sexual offences in the area. The report found him not suitable for non-custodial sentence. It is apparent that the action of the Applicant caused psychological trauma on the victim. The Applicant being an adult was expected to protect the complainant who was a minor but not to prey on her. The Applicant who was a neighbour of the victim, turned into a predator. This calls for deterrence sentence so as to curb the kind of offences which are rampant in the area. I am not persuaded to interfere with the sentence. The Supreme Court in Petition No 18/2023 [Republic v Stephen Gichuki & others](#) [2023] eKLR held that the minimum sentences imposed under the [Sexual Offences Act](#) No 3 of 2006 remain lawful until the Act is amended or declared unconstitutional. Hence, the sentence imposed by the trial court is quite proper in all respects.
10. It is also noted that the Applicant had been released on bond and therefore no issue arises regarding the application of Section 333 (2) of the [Criminal Procedure Code](#). Hence, the sentence imposed shall proceed from the date of conviction.
11. In the result, it is my finding that the Applicant's application aforesaid lacks merit. Same is dismissed.

DATED AND DELIVERED AT SIAYA THIS 8TH DAY OF APRIL, 2025.

D. KEMEI

JUDGE

In the presence of:

Peter Ochieng Waraya.....Applicant

Kofa.....for Respondent

Okumu.....Court Assistant

