



**Wekesa v Republic (Miscellaneous Criminal Application
E054 of 2024) [2025] KEHC 5907 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5907 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
MISCELLANEOUS CRIMINAL APPLICATION E054 OF 2024**

RB NGETICH, J

MAY 8, 2025

BETWEEN

ALEX WEKESA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Alex Wekesa was charged with the offence of defilement contrary to section 8(1) as read with Section 8(3) of the [Sexual offences Act](#) No. 3 of 2006 vide Kabarnet Magistrate's court's S/O no. 036 of 2021. The particulars of the charge were that the applicant on diverse dates between 3rd of September, 2020 and 5th of February, 2021 at [Particulars Withheld] within [Particulars Withheld] Sub - County in Bungoma County intentionally caused his penis to penetrate into the vagina of JKJ a girl aged 17 years.
2. The Applicant denied the charge. After full trial, by Judgement delivered on the 29th day of October, 2021 trial court found the applicant guilty, convicted him of the offence of defilement contrary to section 8(1) as read with section 8(4) of the [Sexual offences Act](#) No. 3 of 2006 and on 17th November, 2021 sentenced the applicant to serve 10 years imprisonment. The sentence was to run from 8th March, 2021 when the Applicant was placed in remand pending trial.

Application For Review Of Sentence

3. The Applicant has now petitioned this court vide an application dated 21st November, 2024 seeking sentence under Article 50(2)(p)(q), Article 27, Article 28, 29 and 48 of the [Constitution of Kenya](#), 2010. The applicant urges this court to apply section 4(1)(a)(b) of the [Probation of offenders Act](#) Cap 64 laws of Kenya.



4. The Applicant states that he is a first offender and seek leniency, he is remorseful, repentant and reformed as he has learnt to take responsibility of his own actions; that he is a young man and his prayer is to be re-integrated in the society to serve as a role model and a teacher, mentor to others of similar behavior. The Applicant avers that the sentence meted upon him was harsh considering the mitigating factors and urges this court to consider the [sentencing policy](#) of 2016 and place him on a non-custodial sentence for the remaining part of the sentence.
5. When the matter came up for hearing on the 10th February,2025, the Applicant said he is now remaining with 2 years and 8 months to serve.

Response By State

6. The Prosecution counsel Ms. Bartilol urged this court to call for social inquiry which the court directed the probation officer to prepare and it was filed on the 26th February,2025.

Social Inquiry Report

7. From the report, the Applicant dropped out of school in class 7 in the year 2017 out of personal will and due to financial constraints. Thereafter, the applicant started working as a herder in Kitale before relocating to Nakuru in the year 2020 where he was employed as a farm hand. He met the complainant while working in Nakuru and they moved to his home area in Bungoma County in late 2020 where he went to work in construction sites up to 2021 when he was arrested. The Applicant is not married and does not have any children.
8. The Applicant admits the offence but states he did not know that the victim was a student and was under the age of 18. He states that given the victim was employed as a house help by the same employer who had employed him as a farm hand in Nakuru, he thought she was an adult and therefore he pursued a romantic relationship which led to them deciding to relocate to Bungoma County only for him to be arrested later for defilement.
9. He prays to the honorable court to be lenient on him and grant him a non-custodial sentence for the remaining period which is 2 years and 8 months. While in prison the Applicant has undertaken a course in carpentry and upholstery although he is yet to sit for the exams. The Applicant's family are ready and willing to assist in the Applicant's reintegration back into the community.
10. The victim and her mother indicated that they have forgiven the Applicant and do not harbor any resentment towards him. They do not oppose his application and leave it to court to decide the way forward. The victim completed her secondary school studies and is currently married and living with her husband and child.
11. The local administration of where the Applicant hails from in East Siboti Sub-Location, Siboti Location Bumula East sub-county within Bungoma County indicated that they know the Applicant as a person of good conduct prior to his arrest. He said the father is a well-known mason within the area. They are not opposed to early release of the Applicant to serve non-custodial sentence for the remaining period of sentence and they are willing to assist in supervision within the community.

Determination

12. 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*.

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. The applicant herein has 2 years and 7 months to complete his sentence. He prays to be released on non-custodial sentence for the remaining period so that he may utilize the carpentry skills he has learnt in prison. The victim who has since completed her secondary school education and is now married together with one child has no objection to applicant serving the remaining sentence while out of prison. The local administration is also not opposed to the applicant’s sentence being revised to non-custodial sentence; they are ready to assist in his reintegration and supervision within the community. upon considering the sentiments given by the victim, accused’s family and local administration together with circumstances surrounding the offence herein, I find this case suitable for revision of sentence. I therefore revise sentence to probation sentence for the remaining period of sentence imposed by the trial court.

Final Orders: -

15. Applicant to serve probation sentence for the remaining period of sentence imposed by trial court.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 8TH DAY OF MAY 2025.

RACHEL NGETICH

JUDGE

In the presence of:-

CA Elvis/Momanyi.

Ms. Kosgei for state.

Applicant Present.

