



**Kibiri v Republic (Miscellaneous Criminal Application
E036 of 2025) [2025] KEHC 8857 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8857 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CRIMINAL APPLICATION E036 OF 2025**

**A MSHILA, J
JUNE 20, 2025**

BETWEEN

PIUS NDIRANGU KIBIRI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before court is the applicant's application by way of Notice of Motion dated 30th July, 2024 brought under Section 35 of the [Penal Code](#), Article 57 of the [Constitution](#) and any other enabling provisions of the law. The Applicant sought for orders:-
 - a. Spent
 - b. Spent
 - c. That this Honourable Court maybe pleased to make orders to invoke Section 35 of the [Penal Code](#) under Paragraph 2.10.1-2.10.7 of the [Sentencing Policy guidelines](#) (2023) hence the entire time the applicant had already served since he was deprived of his liberty on the 23/04/2017 as a sufficient punishment and award him absolute discharge or conditional or any other order may deem fit and just.
 - d. That this Honourable Court may be pleased to make order to invoke Paragraphs 3.3.1 up to 3.3.5 of [Sentencing Policy Guidelines](#) 2023 considering the dictates of Article 57 of [Constitution](#) thus the applicant is old man who has been incarceration for long time pursuant to the decision of the Court of Appeal in [Ali Abdalla Mwanza v Republic](#) (2018) eKLR.
2. The Application is premised on the grounds that the applicant still has 2 years and 11 months to serve hence he begs this Honourable Court to appreciate the time served as sufficient and discharge him. That the applicant is transformed and equipped with relevant skills.



3. In his affidavit in support of his application, Pius Ndiragu Kibiri deposed that he was arrested on 23/4/2017 and that his case was heard and determined and he was convicted and sentenced to sixteen years imprisonment on 9/9/2019. That he is yet to serve 2 years and 11 months as such seeks for mercy and leniency from the court.

Issues for Determination

4. Having considered the application, the issue arising for determination is whether the orders sought ought to be granted.

Analysis & Determination

5. On 23/4/2017, the applicant herein was arrested and 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.
6. Upon hearing of the applicant's case, he was convicted and sentenced to 16 years imprisonment.
7. The applicant filed an appeal being HCCRA No. E059 of 2021 where the court found that the prosecution had proved the offence of defilement and the appeal was dismissed.
8. The High Court, however, directed that the commencement date for the term of imprisonment shall be the date of arrest being 23/4/2017.
9. In the circumstances, this court finds that the instant application has been overtaken by events as the Applicant's appeal considered the period from when the Applicant was arrested.
10. The application is found to be devoid of merit and is therefore, disallowed.

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 20TH DAY OF JUNE, 2025.

A. MSHILA

JUDGE

