



**Kiptala v Republic (Criminal Miscellaneous Application  
E027 of 2025) [2025] KEHC 10192 (KLR) (15 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10192 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL MISCELLANEOUS APPLICATION E027 OF 2025  
RN NYAKUNDI, J  
JULY 15, 2025**

**BETWEEN**

**BRIAN KIPKALIS KIPTALA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. What is pending before this court for determination is an undated Notice of Motion Application in which the Applicant is seeking the following orders:
  - a. That the petitioner is seeking for sentence review in accordance to Article 50(2) (p) (q) and section 362 & 364 of the constitution of Kenya 2010.
  - b. Spent.
  - c. That the applicant herein prays upon a grant of prayers above an order for non-custodial sentence infirmity of section 4 of probation act of the subordinate.
  - d. That, section 4(1) (a) (b) of the Probation Offenders Act cap 64 laws of Kenya be applied.
  - e. That the applicant will be seeking a declaration by the court that his application has merits and qualifies to be heard
2. The Application is based on the following grounds among others:
  - a. That the applicant was charged, convicted and sentenced to 15 years for the offence of defilement c/sec 8(1) as read with 8(4) of the Penal Code at CM'S court Kabarnet
  - b. That the applicant is requesting for a sentence review and be admitted on probation/ community service order



- c. That the applicant is a first offender and he is remorseful, repentant and God fearing
  - d. That this Hon. Court has unlimited jurisdictions to hear and determine this application under the provisions of article 165(3) (b) of the [Constitution of Kenya 2010](#)
  - e. That this Hon. Court has powers to hear and determine infringement of fundamental rights and award remedies under the provisions of sec 216 and 389 of the criminal procedure code on mitigation and the values of sentencing as provided for in the sentencing policy guidelines of 2016 paragraph 4.1
3. The Application is supported by the annexed affidavit sworn by the Applicant which I summarize as follows:
- 1. That I was charged for the offence of defilement contrary to section 8(1) as read with 8(4) of the [SOA](#) No. 3 of 2006 convicted and sentenced to 15 years' imprisonment at Kabarnet CM'S court.
  - 2. That I am requesting for a sentence review of the remaining part of my sentence to be substituted with non-custodial sentence
  - 3. That I am remorseful, repentant, reformed and rehabilitated, as I have learned hard lessons while in custody and now beg for leniency
  - 4. That I am young man with young family who solely depends on me
  - 5. That I do beg that I be accorded to benefit with the provision of Article 50(2)(q) of the [Constitution of Kenya 2010](#)
  - 6. That during my time in prison I have been able to go through various Theological and Social programs with certificates
  - 7. That it's my humble prayer that I be granted a fair opportunity to argue my application
  - 8. That all I have depend herein is true to the best of my knowledge information and belief

### **Decision**

4. The applicant is aggrieved with the custodial sentence of 15 years' imprisonment for the offence of defilement under the [Sexual Offence Act](#). He has approached this court under the Art 22 of the [Constitution](#). First and foremost, the court has to reiterate the purposes for which a court may impose a sentence on an offender:
- a. To ensure that the offender is adequately punished for the offence,
  - b. To prevent crime by deterring the offender and other persons from committing similar offences,
  - c. To protect the community from the offender,
  - d. To promote the rehabilitation of the offender,
  - e. To make the offender accountable for his or her actions,
  - f. To denounce the conduct of the offender,
  - g. To recognize the harm done to the victim of the crime and the community.



5. In the case of *R v Harrison* (1997) 93 A Crim R 314 at 320 the court remarked that:

Except in well-defined circumstances such as youth or the mental incapacity of the offender ... public deterrence is generally regarded as the main purpose of punishment, and the subjective considerations relating to the particular prisoner (however persuasive) are necessarily subsidiary to the duty of the courts to see that the sentence which is imposed will operate as a powerful factor in preventing the commission of similar crimes by those who may otherwise be tempted by the prospect that only light punishment will be imposed

6. This court is being asked to review the sentence from a custodial and substitute with that of non-custodial. For the court to review the sentence the same principle which apply on the revisional jurisdiction of the court under section 362 and 364 of the *CPC*. The court of appeal restated the law in *Bernard Kimani Gacheru v Republic* [2002] eKLR that:

“It is now settled law, following several authorities by this court and by the High court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate court feels that the sentence is heavy and that the Appellate court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist.”

7. Similarly, in *Mokela v The State* (135/11) [2011] ZASCA 166, the Supreme Court of South Africa held that:

“it is well-established that sentencing remains pre-eminently within the discretion of the sentencing court. This salutary principle implies that the appeal court does not enjoy *carte blanche* to interfere with sentences which have been properly imposed by a sentencing court. In my view, this includes the terms and conditions imposed by a sentencing court on how or when the sentence is to be served.”

8. In the instance case the applicant has not satisfied the criteria set out in the *Bernard Kimani case* (*supra*). There is no compelling or exceptional circumstances to warrant the review of sentence for it is not harsh, excessive or punitive. For those reasons I dismissed the application on the review of sentence.

**DATED SIGNED AND PUBLISHED VIA CTS AT ELDORET ON THIS 15<sup>TH</sup> JULY 2025**

.....

**R. NYAKUNDI**

**JUDGE**

