



**Nyokaye v Republic (Miscellaneous Criminal Case E039 of 2024)
[2025] KEHC 10379 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10379 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
MISCELLANEOUS CRIMINAL CASE E039 OF 2024**

**WA OKWANY, J
JULY 10, 2025**

BETWEEN

JEREMIAH ONDARI NYOKAYE APPLICANT

AND

REPUBLIC RESPONDENT

*(Being Review on Sentence from the Decision in
Nyamira Cr. Case No. 14 of 2019 Hon. on 6.5.2019)*

RULING

1. The applicant was convicted, for the offence of defilement contrary to Section 8 (1) as read with Section 8 (3) of the *Sexual Offences Act*. He was, upon conviction, sentenced to serve ten (10) years imprisonment. He has now filed the instant application seeking a revision of his sentence. The Application is supported by the Applicant's affidavit wherein he states that he is remorseful for his actions, has already served five years out of his 10 years prison term and is now well rehabilitated. He further states that his continued incarceration is detrimental to the welfare of his children who are now wallowing in abject poverty as he was their sole breadwinner.
2. The Respondent opposed to the Application while arguing that the Applicant was not qualified for early release during the recent Prison Decongestion Program and that he should complete his sentence in custody.
3. This court is alive to the fact that sentencing is a matter that falls under the discretion of the trial court, which discretion, an appellate court should not interfere with except in instances where the sentence is found to be manifestly excessive or illegal. (See *Bernard Kimani Gacheru v Republic* [2002] eKLR).



4. In R v Ratilal Amarshi Lakhani [1958] EA 140, 141, (a Ugandan case), Lewis J stated:-

“It has been laid down in India that the High Court does not exercise the power of enhancing a sentence in every case in which the sentence passed is inadequate. The mere fact that the High Court would itself, if it had been trying the case, have passed a heavier sentence than that which the trial Court has passed is no reason for enhancing the sentence. . The High Court will interfere only where the sentence passed is manifestly and grossly inadequate.”

5. The court also reminds itself that sentencing should always follow the provisions of the statute, the Sentencing policy guidelines published in 2023 and the Principles laid down in the various case law.

6. Article 25 (a) of the Constitution provides for the rights and fundamental freedoms from torture and cruel, inhuman, or degrading treatment or punishment. These fundamental rights should be borne in mind in sentencing an offender upon conviction for that particular offence. It is also a principle in sentencing that any verdict, sanction or punishment must be proportionate to the crime for which the accused person has been convicted.

7. The rights of an accused person are provided for under Article 50 of the Constitution. Article 50 (2) of the Constitution provides thus: -

(2) Every accused person has the right to a fair trial, which includes the right-

(q) if convicted, to appeal to, or to apply for review by a higher court as prescribed by law.

8. The powers of the High Court on revision of sentences are stated under Article 165 of the Constitution which provides as follows: -

165. The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial, or quasi-judicial function, but not over a superior court.

9. To actualize the above provisions of the Constitution, the Criminal Procedure Code sets out the manner in which these revisionary powers are to be exercised under Sections 362 and 364 as follows: -

362. Power of the High Court to Call for Records

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate court.”

364. Powers of the High Court on Revision

1. In the case of a proceeding in a subordinate court, the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may –

a. In the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;

b. In the case of any other order other than an order of acquittal, alter or reverse the order.

2. No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defense: Provided that this subsection shall not apply to an order made where a



subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

3. Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed that might have been inflicted by the court which imposed the sentence.
4. Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
5. When an appeal lies from a finding a sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.

10. Section 8(3) of the *Sexual Offences Act* stipulates as follows: -

- (3). A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.

11. A perusal of the record reveals that the trial court called for a pre-sentencing report, considered the *Judiciary Sentencing Policy Guidelines* and the Applicant's mitigation before passing the ten years imprisonment sentence. I find that the trial court exercised its discretion judiciously and correctly applied the legal principles of sentencing. The trial court considered the circumstances of the case and steered clear of the mandatory minimum sentence. This court is however still minded to go an extra mile, in the interests of justice, and call for the Probation Officer's further sentence review report, so as to highlight the circumstances of the victim and the child that was allegedly born out of the defilement incident, for this court's consideration before making its final orders. The Court shall render a final ruling upon receipt of the said Report. Mention on 7th October 2025.

12. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA MICROSOFT TEAMS THIS 10TH DAY OF JULY 2025.

W. A. OKWANY

JUDGE

