



**SN v Republic (Criminal Revision E081 of 2025)
[2025] KEHC 11200 (KLR) (29 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11200 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
CRIMINAL REVISION E081 OF 2025
AK NDUNG’U, J
JULY 29, 2025**

BETWEEN

SN APPLICANT

AND

REPUBLIC OF KENYA RESPONDENT

RULING

1. The Applicant moved this court vide a Notice of Motion dated 12th May 2025 seeking the following orders;
 - i. Spent.
 - ii. Spent.
 - iii. That the Honourable court be pleased to call for and examine the record of Nanyuki Sexual Offence No. E054 of 2024 Between The Republic and Stephen Ndirangu before Hon. M. Kimani (SRM) where Ruling had been delivered on the 30th day of April, 2025 and the subject/ applicant deemed as a child in need of care and protection and referred before Director of Children Services and was further ordered to face trial before the trial Court for the purpose of the Honourable Court satisfying itself of the correctness, legality or propriety of the findings or order recorded or passed and as to the regularity of the proceedings and direction thereof.
 - iv. That the Honourable Court do find and order that the direction by the Honourable Maureen Kimani for the subject to stand trial having ordered for referral before Director of Children Services as a child in need of care and protection was irregular, illegal and improper and to proceed to set the same aside and order that impending trial be halted and the applicant be placed under the supervision of Director of Children Services.
2. The Application was based on the following grounds;



- a. That the applicant was charged in Nanyuki Sexual Offence No. E054 of 2024 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 and alternative charge of Committing indecent with a child contrary to Section 11(1) of the *Sexual Offences Act* No. 3 of 2006.
 - b. That the applicant was deemed as a child in need of care and protection and the Director of Children Services was ordered to open a care and protection file and file a comprehensive report with regard to him.
 - c. That the applicant the trial (sic) further ordered that the subject/applicant is fit to stand trial and the matter is scheduled for hearing on 18/6/2025.
 - d. That the impending trial would amount to double jeopardy contrary to *the Constitution* of Kenya, 2010.
 - e. That this is a matter in which the Honourable Court should exercise its discretion for purpose of ensuring the interests and ends of justice is served and the applicant be placed under Director of Children Services who ought to be directed to open a care and protection file and file a comprehensive report with regard to him.
 - f. That the provisions of Section 239 of the *Children Act* No. 29 of 2022, Article 47(1) of *the Constitution* and Section 4 of the Fair Administrative Actions Act 2015 are in support of the Applicant's case.
 - g. That the Application is meant to serve the interest of justice and to protect the rights and fundamental freedoms of the applicant as proved under Article 19,20,21 and 23 of *the Constitution* of Kenya.
3. The application is further supported by a supporting affidavit sworn by VW where it is deponed inter alia that the deponent is the grandmother and guardian of the applicant. Further that the Applicant was arrested and arraigned in the lower court 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 and Committing an indecent act with a child contrary to Section 11 (1) of the *Sexual Offences Act* No. 3 of 2006 vide Nanyuki Sexual Offence Case No. E054 of 2024.
 4. That after the Counsel on record for the applicant oved the Honourable Court to have the applicant be deemed as a child in need of care and protection, the Court rendered its Ruling on 30/4/2025 in which the trial court found as such and directed the Director of Children Services to open a care and protection file and file a comprehensive report with regard to the Applicant to enable the Honourable Court to provide supervision of the applicant.
 5. The deponent adds that the Trial Court further redirected that the applicant stands trial for the charges levelled against him and the matter is slated for on 18/6/2025. This, it is urged, would amount to mistrial and double jeopardy if any case he is found to be in conflict with the law and for that reason, the Honourable court should exercise its jurisdiction under Section 239 of the *Children Act* No. 29 of 2022 and Article 3 (1) and 47 (1) of *the Constitution* of Kenya to protect his rights and fundamental freedom and direct that he be placed under the supervision of the trial court through the Director of Children Services.
 6. The application is opposed through grounds of grounds of opposition viz;
 1. That the application didn't meet the legal requisite threshold for the grant of orders sought.



2. That it had not been demonstrated that the order for the trial to proceed in Nanyuki Sexual Offence No. E054 of 2024 by the Learned Trial Magistrate was incorrect, illegal or improper.
 3. That it had not been demonstrated that the proceedings leading up to the order for the trial to proceed by Learned Trial Magistrate were irregular.
 4. That having a care and protection file opened for the applicant during the pendency of trial in Nanyuki Sexual Offence No. EXXX of 2024 didn't amount to double jeopardy as defined in law.
 5. That having a care and protection file opened for the applicant was standard procedure when dealing with a child in conflict with the law as per Sections 225 (1) and 236(1) of the *Children Act*.
 6. That the Applicant had not made any basis for the Honourable Court's exercise of its discretion in his favour.
 7. That the Applicant lacked merit, was an abuse of the court process and should accordingly be dismissed.
7. Counsel for the Applicant, Mr. Onaya, placed reliance on the affidavit filed as well as authorities provided. Miss Kimani for the state filed written submissions.
 8. I have considered the application before court. The question for determination is whether the Applicant has met the threshold for the grant of the order of revision sought and, if in the affirmative, what orders should issue.
 9. I have called for and perused the record in M.C. S.O case no. EXXX of 2024. In a reasoned ruling dated 30/4/25, the trial magistrate found the Applicant to be a child in need of care and protection and directed the Director of Children services to open a care and protection file and file a comprehensive report with regard to him.
 10. At the same time, the court found the minor fit to stand trial and the charges were read to him.
 11. It is not in dispute that the Applicant had at the material time attained the age whereby he was criminally responsible. Though a child, he was fit to stand trial like any other citizen save to compliance with Article 53(f) of *the Constitution*.
 12. Section 8(7) of the *sexual offences Act*, while recognizing that even minor may fall afoul of the Act, provides that on conviction of a minor under the Act, the court may sentence the accused person in accordance with the provisions of the *Borstal Institutions Act* and the *Children Act*.
 13. The Authorities relied on by the Applicant have, in my respectful view, been misapprehended. The learned judges did not state that a minor should not be prosecuted. They were alluding to the now problematic situation of consensual sex between minors. Whether sex was consensual or not can only be determined upon a hearing where upon the court can decide on conviction or acquittal and if the former, on sentence based on the circumstances of each case.
 14. Whether to charge or not to charge is the preserve of the Director of Public Prosecutions and in practice and where deserving, that office has used diversion as a means of dealing with consensual sex among minors. It would be a fallacy of catastrophic consequences if the court was to sanction that so long as one was a minor, even though of the age of criminal responsibility, they should never be charged. Pray, I pose, what would become of minors of the age of criminal responsibility sexually molesting a 2year old for example?



15. As indicated above, the question raised by the applicant challenges an outcome on merit in the ruling of the trial magistrate. If anything, if there were to be a valid challenge to the finding, then, the Applicant's recourse was in an Appeal.
16. In the end I must find and hold, that there was no incorrectness, Illegality or impropriety in the finding and orders of the trial magistrate. The issue of double jeopardy does not arise. Being placed under care and protection was in the interests of the applicant who despite facing a criminal trial was still entitled to the rights of a child.
17. With the result that the application before court lacks merit and is dismissed.

DATED SIGNED AND DELIVERED THIS 29TH DAY OF JULY 2025.

A.K. NDUNG'U

JUDGE

