



REPUBLIC OF KENYA



KENYA LAW
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**Mwangi v Republic (Criminal Revision E019 of 2025)
[2025] KEHC 12557 (KLR) (10 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12557 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E019 OF 2025
RN NYAKUNDI, J
SEPTEMBER 10, 2025**

BETWEEN

ISAAC NDEGE MWANGI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application dated 25th February 2025 where the Applicant is seeking the following orders:
 - a. That, the application is founded on section 362 as read with section 364 of the Criminal Procedure Code and in reliance to article 50 (2) (p) of *the Constitution* of Kenya.
 - b. That, the applicant is seeking for orders for a sentence review of his sentence to a less severe sentence in compliance to Article 50 (2)(p) of constitution of Kenya.
 - c. That, the applicant is seeking for orders for a sentence reduction on the reason that the trial court imposed the maximum mandatory sentence as provided under section 11 (1) of S.O.A.
 - d. That, the applicant is seeking for orders for application of principles of sentencing which may earn him a sentence reduction by one third of the prescribed sentence of ten years.
 - e. Spent.
2. The application is supported by the annexed affidavit sworn by the Applicant in which he deponed as follows;
 - a. That I was charged with the offence of defilement contrary to section 8(1) as read with sec 8 (2) of the S.O.A No. 3 of 2006, was convicted and sentenced to serve 10 years' imprisonment



with the alternative charge of indecent act with a child by CM's court at ELDORET by Hon. E. Tanui that was delivered on 23rd January 2025.

- b. That, the applicant did not appeal the above decision but filed the present miscellaneous application for a reduction of his sentence on the grounds:
 - a. That, the applicant is claiming the benefit of article 50 (2)(p) of C.O.K on his sentence of 10 years which in this instant was the maximum provided in the provision he was charged under of indecent act. There were no aggravating circumstances for imposing the maximum mandatory sentence and I urge there viewing court to find it a good reason to interfere in this case I am relying on the authority of Shadrack Kipkoech Kogo vs. R in Eldoret C.A No. 253 of 2013. Where it was held that manifestly excessive sentence is a good reason to interfere with the discretion of the court to impose suitable sentence in the circumstances of the case.
 - b. That, the applicant is seeking a sentence reduction on the basis that the indecent act does not provide for a minimum mandatory sentence and therefore the trial court had the discretion to impose a sentence less than ten years.
 - c. That, the application of principle of mitigation should earn him one third of the ten years that was imposed and further make it proportionate to the committed offence.
 - d. That the applicant waived his right of appeal as a gesture of showing responsibility for his mistakes and the court on that account may consider him for a lenient sentence reduction.
3. The applicant was charged with the offence of defilement contrary to section 8(1) as read with section 8(2) of the Sexual Offences Act No 3 of 2006. The brief facts are on the 22nd day of September 2020 and 23rd day of September 2020 at Soy sub-county, within Uasin Gishu County, unlawfully and intentionally caused his genital organ namely penis to penetrate the genital organ namely anus of Mary Wamboi a girl aged 8 years old.
4. The applicant went through a trial, as reflected in the judgment of the learned trial magistrate, during which four witnesses for the State adduced evidence, after which the accused person was placed on his defence. In the final analysis, the learned trial magistrate pronounced himself as follows:
 - a. The accused person Isaac Ndege Mwangi is hereby acquitted under section 215 of the CPC cap 75 of the offence in the main count, namely defilement contrary to section 8(1) as read with section 8(2) of the Sexual Offences Act 2006
 - b. The accused person Isaac Ndege Mwangi is hereby convicted under section 215 of the CPC cap 75 of the offence in the alternative charge namely committing an indecent act with a child contrary to section 11(1) of the Sexual Offences Act 2006
5. The applicant has invited this court to apply the provisions of section 362 & 364 of the Criminal Procedure Code together with Article 50 (2) (q) of the constitution to make a finding that the sentence is manifestly excessive and the same should be interfered with by this court.



Decision

6. This is a matter in which the court is being moved to review the sentence and the principles applicable on appeal are relevant *mutatis mutandis*. First and foremost, I need to remind myself of the objectives of sentencing as laid down in our sentencing policy guidelines 2023 which provides as follows:

Retribution: to punish the offender for their criminal conduct in a just manner

Deterrence: to deter the offender from committing a similar or any other offence in future as well as to discourage the public from committing offences
Rehabilitation: To enable the offender to reform from his/her criminal disposition and become a law-abiding person.

Restorative justice: To address the needs arising from the criminal conducts such as loss and damages sustained by the victim or the community and to promote a sense of responsibility through the offender's contribution towards meeting those needs.

Community protection: To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.

Denunciation: To clearly communicate the community's condemnation of the criminal conduct

Reconciliation: To mend the relationship between the offender, the victim and the community.

Reintegration: To facilitate the re-entry of the offender into the society.

7. The sentencing regime and imposition of various categories of sentences remain conferred within the provisions of trial courts. The exercise of judicial discretion must be done under the structure provided under the law. In the case of *Veen v. The Queen (No 2) (1998) 164 CLR 465* Mason CJ Brennan Dawson and Toohey JJ said at 476

.... sentencing is not a purely logical exercise, and the troublesome nature of the sentencing discretion arises in large measure from unavoidable difficulty in giving weight to each of the purposes of punishment. The purposes of criminal punishment are various: protection of society, deterrence of the offender and of others who might be tempted to offend, retribution and reform. The purposes overlap and none of them can be considered in isolation from the others when determining what is an appropriate sentence in a particular case. They are guideposts to the appropriate sentence but sometimes they point in different directions.

8. In addition, in *R v Engert (1995) 84 A Crim R 67* at 68, Gleeson CJ observed

Sentencing is essentially a discretionary exercise requiring consideration of the extremely variable facts and circumstances to the principles to be applied in sentencing are in turn developed by reference to the purposes of criminal punishment.

In a given case, facts which point in one direction in relation to one of the considerations to be taken into account may point in a different direction in relation to some other consideration. For example, in the case of particular offender, an aspect of the case which might mean that deterrence of others is of lesser importance, might at the same time, mean that the protection of society is of greater importance....



It is therefore erroneous in principle to approach the law of sentencing as though automatic consequences follow from the presence or absence of particular factual circumstances. In every case, what is called for is the making of a discretionary decision in the light of the circumstances of the individual case, and in the light of the purposes to be served by the sentencing exercise.

9. The purposes for which a court may impose a sentence on an offender are as follows:
 - 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
10. If this court has to interfere with the impugned sentence the applicant must bring himself within the *Bernard 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, the sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states are shown to exist.”
11. My reading of section 8(4) of the *Sexual Offences Act* has restricted court’s discretion in imposing sentences. It is therefore trite law the sentence is not to be departed lightly and for flimsy reasons or on speculative hypothesis like mercy, empathy, compassionate, emotional and human feelings of pain so as to some degree the provisions departed from without clear evidential material. In applying the statutory provisions, it is unduly restrictive to rely solely on concepts developed in appeals against sentence as the only criterion. If the sentencing court, upon considering the circumstances of a particular case, is satisfied that the prescribed sentence would be unjust because it would be disproportionate to the crime, the offender and the needs of society such that imposing it would result in an injustice, the court is entitled to impose a lesser sentence.
12. In response to the application, I found no truly convictions to interfere with the sentence imposed by the trial court. The application lacks merit and the same is dismissed with leave to appeal if need be by the applicant. It so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 10TH DAY OF SEPTEMBER 2025

.....

R. NYAKUNDI
JUDGE

