



Chesaro v Republic (Criminal Miscellaneous Application E041 of 2023) [2024] KEHC 2401 (KLR) (6 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2401 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL MISCELLANEOUS APPLICATION E041 OF 2023**

RB NGETICH, J

MARCH 6, 2024

BETWEEN

JOSEPH CHESARO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with the offence of attempted defilement in violation of Section 8(1) as read with section 8(2) of the Sexual Offences Act No. 3 of 2006. The particulars of the charge were that the accused on the 3rd day of July,2009 at [Particulars Withheld] within Baringo county of Rift Valley Province intentionally and unlawfully did cause his penis to penetrate the vagina of GJ a juvenile girl aged 7 years in violation of Section 8(2) of the Sexual Offences Act No. 3 of 2006.
2. The Applicant faced an alternative charge of Indecent Act with a child contrary to section 11(1) of the Sexual Offences Act No. 3 of 2006. The particulars were that the accused on the 3rd day of July, 2009 at [Particulars Withheld] within Baringo County of the Rift Valley Province, unlawfully and indecently assaulted GJ a juvenile aged 7 years by causing his penis to come into contact with her chest (breasts).
3. The accused pleaded not guilty to the charges and the matter was set down for full trial and by judgment delivered on 2nd of December,2009 the applicant was convicted and sentenced him to serve life imprisonment. He filed appeal to High Court which was dismissed in its entirety.
4. The applicant now seeks review of his sentence on ground of advanced age being that he is now 75 years old. He urges this court to invoke the provisions of Section 333(2) and the period spent in remand be factored in the sentence to be awarded. The applicant cited the case of Malindi Court of Appeal Criminal Appeal No.12 of 2020 Kitsao Vs Republic in which the provisions of mandatory life sentence was declared unconstitutional.



5. The applicant states that he has been in prison for 14 years and has learnt important lessons from his incarceration and being 75 years old, he seeks leniency of the court and urged this court to substitute the life sentence with a determinate sentence to facilitate social re-integration.
6. The prosecution through Ms Ratemo submitted that the Applicant filed appeal in Eldoret where the appeal on sentence and conviction was dismissed. That the Applicant has not moved to the court of appeal to challenge the court's decision. She submits that this court cannot interfere with the sentence for want of jurisdiction and cited the case of *Daniel Oracha Vs. Republic [2019]* eKLR.
7. A social inquiry report indicates that due to applicant's age, he has not received any skill/training while in custody due to his age.
8. The applicant admits the charge and says he was under the influence of alcohol. His two brothers said the applicant was of good conduct and his major problem was excessive alcohol consumption. They are willing to facilitate his supervision and reintegration within the community.
9. The victim's family stated that the victim is currently an adult and is married. Efforts to reach her were futile since he went back to his father in Elgeyo Marakwet. They are not opposed to review of sentence due to his advanced age; they urge this court to pardon the applicant.
10. The local administration are not opposed to the inmate sentence being reviewed indicating that he is very old and his early release will be of great help to him. He is willing to facilitate his supervision and reintegration within the community and the community is not hostile towards him.

Determination

11. I have considered the application herein. On issue of jurisdiction, I take note of the fact that the applicant was sentenced to life imprisonment. The court of appeal declared life imprisonment in Malindi Court of Appeal Criminal Appeal No. 12 of 2021, Julius Kitsao Manyeso Versus Republic.
12. Further, I am guided by Supreme Court decision on review of judgements and orders in the case of *Fredrick Otieno Outa v Jared Odoyo Okello & 3 others [2017]* eKLR where the court stated as follows:-

“...we hold that as a general rule, the Supreme Court has no jurisdiction to sit on appeal over its own decisions, nor to review its decisions, other than in the manner already stated in paragraph (90) above. However, in exercise of its inherent powers, this Court may, upon application by a party, or on its own motion, review, any of its Judgments, Rulings or Orders, in exceptional circumstances, so as to meet the ends of justice. Such circumstances shall be limited to situations where:

 - a. the Judgment, Ruling, or Order, is obtained, by fraud or deceit;
 - b. the Judgment, Ruling, or Order, is a nullity, such as, when the Court itself was not competent;
 - c. the Court was misled into giving Judgment, Ruling or Order, under a mistaken belief that the parties had consented thereto;
 - d. the Judgment or Ruling, was rendered, on the basis of a repealed law, or as a result of, a deliberately concealed statutory provision.
13. In my view, this application falls under circumstances under (d) above where the court has jurisdiction to review its decision on ground of repealed law. In the instant case, the sentence of life imprisonment



has been repealed by caselaw and in my view, the applicant is entitled to benefit from change in jurisprudence. He deserves determinate sentence.

14. In view of the above, I have considered sentiments by the local administration, the victim's family and applicants' family. I also take note of the fact that the applicant is of advanced age being 75 years old. The applicant has been in prison for 13 years and in view of his age and in view of the fact that the family, victim's family and community are ready to welcome him back to the community. I am inclined to set aside sentence of life imprisonment and impose sentence for period already served.

Final Orders: -

15.
1. I hereby set aside life sentence.
 2. I hereby impose sentence equivalent period already served.
 3. Applicant is hereby set free unless lawfully held.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KABARNET THIS 6TH DAY OF MARCH 2024.

RACHEL NGETICH

JUDGE

In the presence of:

Applicant present.

Ms Ratemo for State.

Kibet, Court Assistant.

