



**Gafo v Republic (Miscellaneous Criminal Application  
E110 of 2023) [2024] KEHC 2450 (KLR) (8 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2450 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS CRIMINAL APPLICATION E110 OF 2023**

**A. ONG'INJO, J**

**MARCH 8, 2024**

**BETWEEN**

**ISSACK GAFO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged with the offence of defilement of a child contrary to Section 8 (1) as read with 8 (2) of the [Sexual Offences Act](#) No. 3 of 2006 in Mombasa Chief Magistrates Court Criminal Case No. 2396 of 2013.
2. The Applicant was found guilty, convicted and sentenced to serve 25 years imprisonment on July 1, 2015 by Hon. J. Kamau (RM). Aggrieved by the conviction and sentence, the applicant filed an appeal, HCCR App No. 134 of 2015 which was withdrawn to pave way for review of his sentence herein.
3. Vide an application filed on July 20, 2023 pursuant to Sections 216, 329, 354, 362, 333(2) of the [Criminal Procedure Code](#), Articles 25 (a) & (c) of the [Constitution](#) of Kenya 2010, Section 8 (1) as read with 8 (2) of the [Sexual Offences Act](#), and the [Sentencing Policy Guidelines](#), the Applicant now seeks for a review of his sentence in consideration of mitigating factors that he has indicated in his application namely: -
  - i. That the applicant did not have any criminal record when being sentenced.
  - ii. That the applicant was young aged 25 years and showed remorse.
  - iii. That the applicant has been in custody for a period of over 9 years with good reputation.
4. The trial court file Mombasa Chief Magistrates Court Criminal Case No. 2396 of 2013 could not be traced for perusal by this court. However, the Sentence Review Report prepared by David Chiko Gambo, the Senior Probation Officer on November 21, 2023, was filed herein on February 22, 2024.



This court has established that the applicant was sentenced when he was in his early twenties. He has been in custody for 10 years 8 months and after remission, he has approximately 6 years to serve, having considered the remand period pursuant to Section 333 (2) of the *Criminal Procedure Code*.

5. This court finds that Section 8 (2) of the *Sexual Offences Act* under which the Applicant was charged provides for a sentence of life imprisonment. However, the trial court was lenient and gave determinate sentence of 25 years imprisonment was lawful. However, in consideration that he was in his early 20s, the remainder of his sentence is substituted with 5 years. He is to serve 2 years in custody and 3 years on probation.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,  
THIS 8<sup>TH</sup> DAY OF MARCH 2024**

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

In the presence of: -

Etropia- Court Assistant

Mr. Ngiri for the Respondent

Applicant present in person

