



Kaptum v Republic (Criminal Miscellaneous Application E040 of 2023) [2024] KEHC 2366 (KLR) (6 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2366 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL MISCELLANEOUS APPLICATION E040 OF 2023**

RB NGETICH, J

MARCH 6, 2024

BETWEEN

ALEX KAPTUM APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged in count one with the offence of attempted defilement contrary to Section 9(2) of the *Sexual Offences Act* no 3 of 2006. The particulars of the charge were that the accused on the 7th day of October,2021 at around 0100hrs in Keturwo village, Baringo North sub-county within Baringo County, intentionally attempted to cause his penis to penetrate the vagina of L.C a child aged 17 years.
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 7th day of October,2021 at around 0100hrs in Keturwo village, Baringo North sub-county within Baringo County, intentionally and unlawfully touched the breasts and vagina of L.C a child aged 17 years.
3. The accused pleaded not guilty to the charges and a plea of not guilty recorded. The case proceeded for full trial and by judgment delivered on the 27th September, 2022, the applicant was convicted and sentenced to serve 6 years imprisonment to commence from 21st October,2021 when the accused person was placed in custody pending trail.
4. The applicant now seeks review of sentence so as to serve non-custodial sentence for the remaining period of the sentence on ground that he has young children who are lacking parental support and his health is deteriorating in prison due to sickness and harsh conditions. He says he has good relationship with the complainant.



5. The prosecution through Ms. Ratemo submitted that having perused the social inquiry report, the applicant was charged with sexual offence and was sentenced to serve 6 years imprisonment which was quite lenient. She submits that the social inquiry report is negative and the accused is not suitable to serve on probation.
6. A social inquiry report indicate that the applicant is the only one with criminal history in his family and that he had formal education up to standard five at Rebeko Primary School. He dropped out of school in the year 2009 due to his own personal will and lack of parental support. He started doing casual jobs in the year 2010 within the community. The inmate is single but has a child aged 7 years. While in prison in Eldoret, he worked at the farm and currently at Kabarnet prison, he is attached at industry doing sand paper work.
7. The applicant admits the offence as charged and says while in custody, he has been rehabilitated. He prays for non-custodial sentence so as to assist his mother in taking care of his sickly baby. His mother and uncle said the applicant has been troublesome for a while; that it is not the first time he is in custody. She prayed for his early release so that he can assist him in taking care of his sick baby while his uncle stated that the inmates' character is very unpredictable and refused to comment on proposal for early release.
8. From the report, the victim who is aged 19 years with a child aged four years is currently working as a shop attendant within Kabarnet Town. She stated that the applicant has been calling her threatening to do something to her if she does not forgive him; she is opposed to applicant being released.
9. The local administration indicates that the applicant is one of the troublesome youths within the community; that he has a habit of stealing within the community, has undergone several Alternative Dispute Resolution (ADR) mechanism at community level and some of his cases have reached the court system. Further, that the applicant does not assist the mother in taking care of his sickly baby. The local administration is opposed to applicant's his early release.
10. The probation officers' states stated that the applicant is aged 29 years and was once sentenced to serve a year probation sentence *vide* criminal case number 519 of 2018 and he completed the sentence satisfactorily.

Determination

11. I have considered the nature of the offence committed by the applicant, I have also considered sentiments of local administration, the victims, and applicant's relatives interviewed. I also take note of the fact that the applicant has served probation sentence before and the victim's report that the applicant has been calling to threaten her.
12. In view of the above I am of the view that this matter is not suitable for revision of sentence. I decline to revise sentence imposed by trial court.

13. Final Orders: -

1. Application for revision of sentence is hereby dismissed.
2. Applicant to complete sentence in prison.

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

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RACHEL NGETICH

JUDGE

In the presence of :

Kibet, Court Assistant

Ratemo for State

Applicant present

