



**Lekichep v Republic (Criminal Revision E080 of 2023)
[2024] KEHC 2393 (KLR) (7 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2393 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E080 OF 2023
RB NGETICH, J
MARCH 7, 2024**

BETWEEN

JAMES LEKICHEP APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was 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. The particulars of the offence were that the applicant on diverse dates between 30th November, 2012 and 19th December,2012 in Mogotio District within Baringo County did intentionally and unlawfully caused his penis to penetrate the vagina of IL a girl aged 13 years.
2. The Applicant faced an alternative charge of committing 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 diverse dates between 30th November,2012 and 19th December,2012 in Mogotio District within Baringo County intentionally committed an indecent Act by touching the vagina of IL a child aged 13 years.
3. The Applicant pleaded not guilty to the charges and after trial, the applicant was sentenced to serve 20 years imprisonment. Being aggrieved and dissatisfied with the trial court's decision, he filed appeal on both conviction and sentence vide Eldoret H.C Criminal Appeal No. 32 of 2013 and by judgement delivered on the 26th Day of March,2015, the appeal on both conviction and sentence was dismissed.
4. The Applicant now seeks review of the sentence imposed by the trial court and for the period served in remand be reduced from the sentence. He invokes Article 50(20 (p)(q) of the *Constitution* and section 362 and 364 of the *Criminal Procedure Code* and states that he is a first offender, is remorseful, repentant, God fearing and has reformed as he has had time for self-reflection during incarceration.



5. The Applicant cited Petition No. E017/2021 and consolidated petition No. 97 of 2021 and Machakos and Mombasa High Courts and urged this court to consider [sentencing policy guidelines](#) 2016 published by the Kenya Judiciary.
6. In response, the state counsel Ms Ratemo submitted that she has perused the social inquiry report and that the accused was charged and convicted of the offence of defilement of a girl aged 13 years and he is remaining with 26 months to complete his sentence. She said the report is positive and she leaves it to the court to exercise its discretion on revision of sentence.
7. From social inquiry report, the applicant had no formal education and his parents used to depend on him to herd family livestock. The inmate is single with no dependant and while in custody, he has been able to acquire skills in Carpentry and mason. He has a grade one in carpentry and grade three in Masonry.
8. From social inquiry report the applicant had intentions to marry the victim and he had gone to the victim's home together with his parents to ask for their daughters hand in marriage. The victim's parents agreed with their request however they told them to wait for the victim to sit for his KCPE exams. The victim called the inmate and informed him that she is done with her exams and he should come and pick her. The inmate went and picked her and took her to his parent's home and after a week he was arrested and charged with this offence. He indicates that it's the victim's brother who reported him that he had defiled the victim and he never knew of the earlier agreements between them and parents.
9. The inmate accepts the offence, he indicates that he never knew asking for marriage to a girl below eighteen years is an offence since he grew up seeing his community members doing it. He is also praying for a lesser sentence as he has been in custody for the last 12 years. He says he has been in constant communication with the victim; that he is aware that he is a single mother of two children and once released he will marry her. He is willing to serve community rehabilitation.
10. The Applicant's uncle stated that the inmate has been in custody for a long period of time. He prays for his early release and he is willing to facilitate his supervision and reintegration within the community.
11. The victim is currently a single mother of two children. She still stays with her parents and does casual jobs within the community. She is not opposed to the applicant being released early stating that the period he has been in custody for very long. She confirmed that she still talks to the applicant and confirmed that they still have intentions of marrying and starting a family together once the applicant is released.
12. The local administration says the applicant was of good character, that he is a young man who used to take care of his parent's cattle and do casual jobs within the community. He is not opposed to applicant's sentence being reduced and he is willing to offer supervision.
13. I have considered social inquiry report and note that the applicant is aged 32 years. He has served 12 years in prison and 4 months in remand which for meaning he was about 20 years at the time of arrest. He is now remaining with 26 months to complete his sentence. He is willing to perform community rehabilitation.

Determination

14. Having Considered the views of the victim, local administration and taking into consideration the fact that the applicant has been in prison for 12 years having been arrested at the age of about 20years.From social Inquiry report, the applicant had agreed with the victim and both families to marry the victim



but report was made by the victim's family who did not know about the arrangement/agreement between the two families. Both the victim and the applicant are still hopeful that they will marry once the applicant is released from prison. The local administration spoke well of the applicant. Considering the unique circumstances of this case, I am inclined to allow the applicant serve the remaining period of sentence under community service order.

Final Orders:

1. The period served in remand to be reduced from sentence imposed by trial court.
2. The applicant to serve the remaining sentence under Probation.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 7TH DAY OF MARCH 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

Applicant present.

Ms Ratemo for State.

Elvis, Court Assistant.

