



**Simiyu v Republic (Criminal Miscellaneous Application  
E055 of 2023) [2024] KEHC 2360 (KLR) (5 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2360 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL MISCELLANEOUS APPLICATION E055 OF 2023**

**RB NGETICH, J**

**MARCH 5, 2024**

**BETWEEN**

**KENNEDY WASWA SIMIYU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged in count one with the offence of Child Pornography Contrary to Section 16 1(a) as read with Section 16 1(g) of the [Sexual Offences Act](#) No. 3 of 2006. The particulars of the offence was that the accused on the 1<sup>st</sup> day of January, 2021 at about 17:30 Hrs at Marigat Township Marigat Location in Baringo South Sub-county within Baringo County, publicly exhibited an obscene photography which depicted the image of MA a child aged 14 years.
2. The accused faced an alternative count of committing an 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 1<sup>st</sup> day of January, 2021 at about 1730 Hours at Marigat Township Marigat Location in Baringo South Sub-County within Baringo County intentionally touched the buttocks, vagina, anus, breast of MA a child aged 14 years with his hands.
3. The accused pleaded not guilty to the charges. The case proceeded for hearing and by judgement on 13<sup>th</sup> January, 2022 the applicant was found guilty and convicted accordingly. The prosecution informed the court that the accused is a first offender, and after being given opportunity to mitigate, the applicant was sentenced to 4 years imprisonment on the 14<sup>th</sup> February, 2022.
4. The applicant now seeks review of sentence stating that he has served one third ( $\frac{1}{3}$ ) of his sentence and seeks that he be allowed to serve noncustodial sentence for the remaining 10 months. He says he was a first offender; he is remorseful and has now reformed. He states that he has a young family to whom he is the sole bread winner and while in prison, he has acquired life skills and has several certificates.



5. Social inquiry report reveal that the applicant had formal education up to form 4 and attained mean grade of D- in the year 2014. After his secondary education, he started working as a shop attendant in Nairobi for a period of two years. He later worked as a casual worker at a construction site. The offender moved to Misikhu in the year 2018 and started working as a mechanic. He moved to Marigat in the year 2020 and has been working at a garage known as Eminging Garage within Marigat where he is specialized in wiring of motor vehicle. He is married but his wife is currently staying at her parent's home.
6. Brief facts of the case are that the offender saw the victim walking towards her mother's food kiosk. He called her and informed the victim that he would like to take a photo with her before she goes back to school. The victim agreed and the offender took the photos with her. The offender using his phone later posted the photo on one of the social media platforms.
7. The local administration are not opposed to having the applicant being released to serve the remaining sentence within the community service and specifically at area chief at kiminini.
8. The local administration of Perkerra where the offence was committed are not opposed to applicant being released to serve the remaining sentence within the community if he has reformed but said the applicant is not well known in the area as he had moved to Marigat in search of work.
9. The applicant says for the period he has been in prison, he has had time to reflect on his actions and he regrets what he did. He wishes to stay in Marigat where he was working as a mechanic since 2020 if allowed to serve the remaining period while in the community. He said he has also done masonry work while in prison and has been assisting at Kenya School of Government Kabarnet.
10. His mother prays that his son be allowed to serve out of prison as they have struggled financially as a family due to his incarceration. His wife states that life has been so tough without the applicant and was forced to go back to her parents' home since she could not afford to raise enough money for rent and upkeep of the children. She says they are ready and willing to welcome the inmate back home and assist in his reintegration back into the society.
11. From the report, the victim is a form 3 student at Kipcherere mixed boarding secondary school. Her father who was interviewed. He said the victim is in school, is doing well and as her parents, they have decided to leave it to the court to decide the fate of the applicant and will accept the court's decision.

## **Determination**

12. I have considered sentiments by the local administration, the victim's parents, applicant's mother and wife. I also take note of the fact that the applicant was a first offender and is remorseful. Among objectives for sentencing is to rehabilitate offenders. From the report filed by the probation officer, the applicant positively embraced the sentence and has taken time to reflect on his action and also taken advantage of opportunities available in prison to acquire additional skill which will go a long way in assisting his family and community at large. In view of the above, I am inclined to revise applicant's sentence.
13. Final Orders
  1. Accused to serve community service for the remaining period of sentence.
  2. The applicant to serve 10 months community service at the office of the Deputy County Commissioner in Marigat.



**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 5TH DAY OF MARCH 2024.**

.....

**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

Applicant present.

Kibet – Court Assistant.

Ms Ratemo for State present.

