



**Njenga v Republic (Miscellaneous Application 24 of 2023)  
[2024] KEHC 4307 (KLR) (Civ) (2 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 4307 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA  
CIVIL  
MISCELLANEOUS APPLICATION 24 OF 2023  
CM KARIUKI, J  
MAY 2, 2024**

**BETWEEN**

**JIMMY NGANGA NJENGA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being a Revision against the sentence by Honourable C Obulutsa – Chief Magistrate delivered on 11th March 2021 in the Chief Magistrate Court at Nyabururu Criminal Case No. 50 of 2017))*

**RULING**

1. By a Notice of motion dated filed on 4/5/2021, the applicant seeks the court to take into account the period.
2. The period of four (4) years he was in custody and thus reduced the sentence of the applicant case is in his affidavit filed on 4/5/2021 vide paragraph 2-9;
  - a. He was charged with an offense of defilement contrary to section 8(2) of the [Sexual Offense Act](#) No. 3 Act of 2006.
  - b. That, since his Incarceration his family has suffered much since he was the only breadwinner.
  - c. He was unable to appeal in time due to financial constraints, he depended on his people to hire a lawyer but unfortunately, they lacked finances prompting my lateness.
  - d. That, he pray this honorable court consider his application, give him a non-custodial sentence, reduce his sentence, or set him free.
  - e. He prays this honorable court to consider and include 4 years he suffered in remand in his sentence.



- f. Application.
  - g. That, other grounds will be adduced during the time of hearing hence wish to be present during hearing.
  - h. am an aged person of over 65 years and his health Is deteriorating considering he is TB-positive as well as asthmatic.
3. The respondent argues that the victim was 13 years old and the act of defilement was violent. The minimum sentence ought to have been twenty years (20) years but was sentenced to thirteen (13) years thus seeking enhancement of the sentence.
4. PW 1 evidence was that;
- PW 1 AWN said she was aged 13 years and in standard five. On the said date she was heading to school at 6 a.m. when she met the accused along the road. He carried her into a bush. He had a panga, rungu, and knife which he used to threaten her. He cut her on the ribs with the panga, pulled up her petticoat, and tore her biker before defiling her. She bled a lot.
5. The applicant's defense was nil nor did he call witnesses.

### **Analysis And Determination**

6. In the resentencing application, the applicant seeks a reduction of the sentence of 13 years meted out for defiling a child of 13 years. Under the provisions of section 8. (1) of the sexual offenses Act, A person who commits an act that causes penetration with a child is guilty of an offense termed defilement.
- (2) A person who commits an offense of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.
  - (3) A person who commits an offense of defilement with a child between the ages of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.
  - (4) A person who commits an offense of defilement with a child between the ages of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years.
8. Because of the provisions above, the accused /applicant ought to have been sentenced to 20 years and above. However, without any explanation, the court sentenced him to merely 13 years. Now he asks the court to reduce the sentence by four years he has been in custody or be set free.
9. He bases his plea on the victim. the ground that, he is 65 years old and is TB positive and asthma. he prosecution breathes fire on that plea and urges the court to enhance the sentence to a minimum of twenty years on the premise that the incident of defilement was merciless as the victim was even cut in the ribs to succumb to the passions of the applicant and in any case the sentence was a pat on the back awarded by the trial court.
10. The evidence by the victim was in part; PW 1 evidence was that;
- PW 1 AWN said she was aged 13 years and in standard five. On the said date she was heading to school at 6 a.m. when she met the accused along the road. He carried her into a bush. He had a panga, rungu, and knife which he used to threaten her. He cut her on the ribs with the panga, pulled up her petticoat, and tore her biker before defiling her. She bled a lot.



11. The same has not been impeached by an appeal nor in the instant proceedings. I agree the applicant ought to have been awarded a sentence proportionate to the brutality he visited the victim. He did not partake peacefully but in brutish and beastly passion.
12. However, since he claims to have served 4 years and it is not contested, and further he is afflicted by life-threatening ailments and being cognizant of the fact that the prosecution never impugned the sentence, it balances out and it is proportionate for the prevailing situation be retained, thus the applicant will continue to serve the remaining period and thus the makes the orders;
  - i. The application is dismissed and the sentence is affirmed.

**DATED AND DELIVERED AT NYANDARUA THIS 2<sup>nd</sup> DAY OF MAY 2024**

.....

**CHARLES KARIUKI**

**JUDGE**

