



**Mwangangi v Republic (Miscellaneous Criminal Application  
E031 of 2021) [2024] KEHC 9973 (KLR) (10 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 9973 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAJIADO  
MISCELLANEOUS CRIMINAL APPLICATION E031 OF 2021**

**SN MUTUKU, J**

**JUNE 10, 2024**

**BETWEEN**

**LAWRENCE MWANGANGI ..... APPLICANT**

**AND**

**REPUBLIC ..... PROSECUTOR**

**RULING**

1. The Applicant was charged with defilement contrary to section 8(1) as read with Section 8(2) of the [Sexual Offences Act](#) No. 3 of 2006 and an alternative charge of committing an indecent act with a child contrary to section 11(1) of the [Sexual Offences Act](#) No. 3 of 2006. The victim was a boy aged 3 ½ years. The offence was alleged to have been committed at Kitengela Township.
2. After hearing the matter fully, the trial court found that the offence proved was Sexual Assault contrary to section 5(1) of the [Sexual Offence Act](#). The trial court invoked section 179(2) of the [Criminal Procedure Code](#) and sentenced the Applicant to 10 years imprisonment.
3. Section 179 (2) of the [Criminal Procedure Code](#) provides that “When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he was not charged with it”.
4. The accused has served sentence for about 6 years. He has now come back to court through Chamber Summons filed on 16<sup>th</sup> February 2021 seeking to consider the time he spent in custody while the trial was proceeding. In essence, the Applicant is asking the court to resentence him taking into consideration the time he spent in custody.
5. I have considered the circumstances of the offence for which the Applicant was tried, convicted and sentenced. He was charged with defilement under section 8(1) as read with section 8(2) of the [Sexual Offences Act](#). The evidence led to conviction. A conviction for defilement under section 8(1) carries a life imprisonment. The minor, the victim of this defilement was aged 3 ½ years. His anal opening



was seriously injured and stool was oozing and soiling his peri-anal area and the boy's anal sphincter was torn. The life of this little boy was affected adversely and he may never overcome the trauma he underwent at that early life. I believe 10 years is lenient in the circumstances of this case.

6. The trial court in her discretion invoked section 179(2) of the *Criminal Procedure Code* to find the offence proved was sexual assault under section 5(1) of the Sexual Offences Act and sentenced him to 10 years imprisonment instead of convicting the Applicant under section 8(2) of the Sexual Offences Act.
7. The penalty under section 5(1) is found in section 5(2) of the *Sexual Offences Act* which reads as follows:

A person guilty of an offence under this section is liable upon conviction to imprisonment for a term of not less than ten years but which may be enhanced to imprisonment for life
8. This court did not warn the Applicant of this provision before this matter proceeded. He should count himself lucky that he got away with what would have been a sentence of life imprisonment. Since the state has not moved this court and given that this court omitted inadvertently to warn the Applicant that the sentence could be enhanced to life imprisonment, I will not disturb the sentence handed down by the trial court. I will also not grant the Applicant the orders he is seeking.
9. Consequently, this application is declined. The Applicant shall continue to serve the sentence handed to him by the trial court until conclusion.
10. Orders shall issue accordingly.

**DATED, SIGNED AND DELIVERED THIS 10<sup>TH</sup> JUNE 2024.**

**S. N. MUTUKU**

**JUDGE**

