



**NL v Republic (Miscellaneous Criminal Application E006 of 2024) [2024] KEHC 7273 (KLR) (14 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7273 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDAMA RAVINE  
MISCELLANEOUS CRIMINAL APPLICATION E006 OF 2024**

**RB NGETICH, J**

**JUNE 14, 2024**

**BETWEEN**

**NL ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged with two counts of offences. Count 1 was the offence of incest by male person contrary to Section 20(1) of the Sexual Offences Act, 3 of 2006. The particulars of the charge were that the accused on the 11<sup>th</sup> day of October, 2010, at [Particulars Withheld] of Baringo County, did cause his penis to penetrate the vagina of WL, a girl aged 7 years who the accused knew to be his daughter, in contravention of Section 20(1) of the Sexual Offences Act No 3 of 2006.
2. Alternative charge to Count 1 was the offence 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 11<sup>th</sup> day of October, 2010 at [Particulars Withheld] of Baringo County, intentionally and unlawfully did indecent acts with WL, a girl aged 7 years by touching her buttocks and thighs in contravention of Section 11(1) of the Sexual Offences Act No 3 of 2006.
3. Count 2 was the offence of transmission of Sexually transmitted disease contrary to Section 26(1) of the Sexual Offences Act No 3 of 2006. The particulars of the charge were that the accused on the 11<sup>th</sup> day of October, 2010 at [Particulars Withheld] of Baringo County intentionally and unlawfully infected WL with a sexually transmitted infection namely Gonorrhoea in contravention of section 26(1) of the Sexual Offences Act No 3 of 2006.
4. The accused pleaded not guilty to all the charges and the matter was set down for trial. The prosecution availed 7 witnesses in support of the allegations against the Applicant. Upon the close of hearing, the applicant was found guilty and convicted of Count 1 but was acquitted count 2 on ground that the



doctor failed to link the accused to the offence. On the 25<sup>th</sup> January, 2011 the applicant was sentenced to serve life imprisonment. He stated that he appealed against the sentence but the appeal has not been heard as has not been served with the appeal records.

5. The applicant submit that this court is seized of competent jurisdiction under Article 165(3) (b) of the Constitution of Kenya 2010 to hear and determine this matter. When the matter came up for hearing on the 16<sup>th</sup> April, 2024 the applicant stated that he has been in prison for 14 years and he prays for determinate sentence. He stated that while at prison, he has done tailoring grade 1 and has obtained a certificate in in dress making Grade 1.
6. He stated that he is 41 years old now and was 26 years old at the time of arrest. He submitted that he was married with 3 children but one died while he was in prison. He prayed to be granted a determinate sentence so that when he finishes, he can join his family.
7. The prosecution counsel Ms. Ratemo submitted that she will not object to the applicant having determinate sentence due to the recent jurisprudence. She urged the court to take note that the victim was 7 years old and this was an offence of incest.
8. Ms. Ratemo prayed that a social inquiry report be availed to determine the victim impact and the applicant to also avail the certificates he has obtained in prison to assist the court in determining the appropriate sentence. The court directed that a social inquiry report. From the report, the applicant is 41 years old. He dropped out of school in class seven due to lack of interest in education. He embarked on doing casual jobs till the time of his arrest. He was married with 3 children but one passed on while he was in prison and his wife re-married after the conviction of the applicant. The last-born who is studying in polytechnic stays with his elderly grandmother.
9. The inmate admitted to the offence and attributed it to being under the influence of alcohol. He regrets the offence and is remorseful. He prays for forgiveness from this court. The victim's father who was the Applicant's cousin passed on and the whereabouts of the victim is unknown and her mother is believed to have originated from Uganda.
10. Those interviewed talked good of the applicant and said he has blended well with the family and community. The area administrator confirmed that the inmate has good ties with the community and are ready to accept him back should he be released. He said the applicant's children who are in need of care and protection are under the care of the inmates' mother who is aged.

### **Determination**

11. Article 165 (6) of the Constitution gives this court supervisory powers over subordinate courts. What I wish to consider is whether the applicant deserved revision of sentence imposed. The applicant was sentenced to life imprisonment and has been in prison for 14 years now. He prayed for determinate sentence so as to unite with his family after completing his jail term. He stated that while in prison he has done tailoring and dress making and he presented certificates as a proof.
12. The applicant was sentenced to life imprisonment. However, in Malindi Court of Appeal Criminal Appeal No 12 of 2021, Julius Kitsao Manyeso Versus Republic the court of appeal declared life imprisonment unconstitutional.
13. In view of the above, I have considered social inquiry by Probation Officer .In view of the decision by court of appeal, the applicant deserved determinate sentence. I take note of the fact that the applicant has served 14 years imprisonment and was 26 years old at the time of sentence. The report by the local administration is good but I also take note of the fact that the child defiled who was applicant's niece was 7 years and I am inclined to impose 25 years imprisonment.



**14. Final Orders: -**

1. Life sentence is set aside.
2. Applicant is sentenced to serve 25 years imprisonment for count 1.
3. Period served in remand and prison to be computed in the two sentences sentence above.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT ELDAMA RAVINE HIGH COURT (SUB-REGISTRY) THIS 14<sup>TH</sup> DAY OF JUNE 2024.**

**RACHEL NGETICH**

**JUDGE**

In the presence of:

Court Assistant: Elvis.

Applicant: present

