



**Udiara v Republic (Criminal Revision E012 of 2024)
[2024] KEHC 8432 (KLR) (11 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8432 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL REVISION E012 OF 2024**

**RB NGETICH, J
JULY 11, 2024**

BETWEEN

COLLINS UDIARA 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 charge were that the accused on diverse dates between 20th September, 2018 and 8th January, 2019 within Baringo County, intentionally and unlawfully caused his male genital organ namely penis to penetrate the vagina of CKW a child aged 15 years old.
2. The accused pleaded not guilty to the charge and the matter was set down for full trial. Upon close of trial by judgement delivered on 4th day of February, 2020, the trial court found applicant guilty, convicted him of Count 1 and on 18th February, 2020 sentenced him to 10 years imprisonment.
3. The applicant has now filed this application under Article 165(3)(9) of [the constitution](#) of Kenya, 2010, section 362, 363 and 364(b) of the [criminal procedure code](#) and [probation of offenders Act](#) seeking review to substitute the remaining period of imprisonment with non-custodial sentence.
4. He states that he is utterly remorseful and repentant of what happened and if given another chance, he will not repeat the offence again. He avers that he is now a reformed person and urged this court to allow this application.
5. When the matter came up for hearing on the 21st May, 2024, the Applicant informed the court that his prayer is for a non-custodial sentence and of the 10 years sentence imposed, he is now remaining with 1 year and 3 months to serve. He stated that he has acquired life skills in carpentry Grade 3 and has certificates.



6. In response, the prosecution prayed for social inquiry report to be availed and if there is any recommendation letter from prison and certificates, the same to be filed.

Social Inquiry Report

7. From the report, the applicant is 34 years old. He dropped out of school after standard 8 due to financial constraints in the family. Shortly after leaving school, he engaged himself in the business of selling second hand clothes within the home environs for a period of about 2 years when he moved to Ziwa and engaged in farming after his mother purchased land. Thereafter, he relocated to Narok where did casual jobs for about 8 months then moved to Mumberes location in Koibatek Sub County and started farming in the forest until the time of his arrest. He has no record of past criminal activities.
8. The applicant stated that while in the area, he came to know the victim and after being friends, they became lovers. He stated that the victim informed him that she was of mature age and they became intimate which culminated in her conceiving a child and the girl's parents informed the local administrators upon learning that their daughter was pregnant and the applicant was arrested and charged with the offence of defilement. The victim later gave birth to a child who is now aged 4 years.
9. The Applicant regrets committing the offence. He blames himself for not being careful before engaging in a relationship with the victim. He prays for leniency from this court. The applicant's mother indicated that she was shocked to learn that the applicant had been charged and arraigned in court. The prison authorities indicated that the applicant has been well behaved while in prison.
10. The father to the victim expressed dismay for his daughter being made a parent prematurely as a result of the defilement and hoped the court would accord his daughter fairness in terms of compensation as it reviews the sentence for the prisoner.
11. The victim is currently aged about 19 years old. She stated that she has been struggling to raise the child who was born from her relationship with the Applicant and further stated that she is currently married and lives with her baby and husband in (Particulars Withheld). She is a house wife but occasionally does casual jobs to supplement her husband's earnings. She however stated that she is not opposed to the Applicant's sentence being reviewed on condition that he is compelled to compensate her for the financial burden she has suffered for the last four years with the baby.
12. The area administrator from where the offence occurred stated that he did not know the Applicant since he was not a local inhabitant of the area and had moved into the area in search of casual jobs. He said he only came to know the applicant when he was arrested and charged with the offence herein and he was not therefore aware of his conduct prior to the offence.
13. The Village elder from (Soy location) in Ziwa sub-county where the applicant lived said the applicant did not have a history of previous criminal activities and that he learnt of the imprisonment from the mother.
14. The report indicate that the applicant has been in prison for 4 years 3 months and he is now remaining with a period of 1 years and 3 months to complete sentence and the probation officer is of the opinion that the home environment is not hostile towards the applicant.

Determination

15. The applicant urges this court to exercise supervisory powers as provided by Article 165(6) of *the constitution* and Section 362 as read with Section 364 of the *Criminal Procedure Code*. The provisions give this court powers in appropriate cases, to review and vary any orders, decision or sentence passed



by the trial court if the court was satisfied that the impugned order, decision or sentence was illegal or was a product of an error or impropriety on the part of the trial court. If the court was so satisfied, the law mandates it to make appropriate orders to correct the impugned order, decision or sentence and align it with the law.

16. The applicant herein submit that he is remorseful and while in prison for 4 years 3 months, he has acquired skills in carpentry grade 3 and a certificate has been filed in support of this. He says he has reformed and urges this court to substitute the remaining period of sentence with a non-custodial sentence. The state counsel's argument is that the sentence was very lenient considering the age of the victim and submitted that she is not opposed to period served in remand being computed in the sentence imposed by the trial court.
17. From the presentence report filed, the victim and her family are not opposed to the applicant's sentence being revised. The victim is however of the view that the applicant should compensate her the money she has spent in taking of the child.
18. The objectives of sentencing are outlined in the 2023 [*Judiciary of Kenya Sentencing Policy Guidelines*](#) at page 15, paragraph 4.1 as follows:

“Retribution: To punish the offender for his/her criminal conduct in a just manner.

Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.

Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims, communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.

Community protection: To protect the community by incapacitating the offender.

Denunciation: To communicate the community's condemnation of the criminal conduct.”

19. From the social inquiry report, the applicant has been in prison for 4 years 3 months and he is now remaining with one year 3 months to complete the sentence. The applicant's argument was that the victim who was 15 years old made him believe that she was of mature age. The victim now aged 19 years is now married and is not opposed to applicant's sentence being reviewed but would want compensation for the upkeep of the child fathered by the applicant. The victim's father would also want his daughter to be compensated. The local administration is not opposed to applicant's sentence being revised. From presentence report, the home environment is conducive to the applicant. In view of the above, I am of the view that it would be in the interest of justice to review sentence so as to allow the applicant serve the remaining period of sentence under probation and during this period, the issue of compensation can be explored so as to accord the victim restorative justice.

20. Final Orders: -

1. The applicant to serve the remaining period of sentence under probation.
2. While on probation, the applicant and victim to explore compensation.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 11TH DAY OF JULY 2024.



.....
RACHEL NGETICH
JUDGE

