



**Lei v Republic (Criminal Revision 205 of 2024)
[2024] KEHC 10933 (KLR) (17 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10933 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 205 OF 2024
DR KAVEDZA, J
SEPTEMBER 17, 2024**

BETWEEN

HIPPALUS MBASU LEI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This file was brought before me for the decongestion exercise pursuant to the Chief Justice’s memo dated 7/12/2022, which provides that inmates who are serving three (3) years imprisonment or less, or those serving long sentences but have a balance of three (3) years or less may be considered for non-custodial sentences.
2. I have gone through the file and noted that applicant was convicted by the trial court for the offence of sexual assault contrary to section 5(1)(a)(i) as read with section 5(2) of the *Sexual Offences Act* No. 3 of 2006. He was sentenced to serve ten (10) years imprisonment.
3. A probation report was filed with respect to the applicant indicating that he has served 5 years and 3 months. According to the said report, the inmate has been receptive to rehabilitation while in prison. However, despite the Applicant expressing remorse about committing the offence, he seemed not to be genuine, and was only expressing his remorse in order to earn favour in terms of being granted a non-custodial sentence. The Report further indicated that efforts to get the victim and the local area chief to get their sentiments were futile. The report concluded that the applicant is not suitable for a non-custodial sentence and that he should serve his sentence to completion.
4. Sexual offences are particularly sensitive matters, and without conclusive proof of genuine remorse, it becomes challenging to consider the applicant for early release. In this case, the victim was only four years old at the time of the offence, and even now, she remains a minor. The gravity of the offence,



coupled with the applicant's apparent lack of sincere contrition, makes it difficult to justify granting a non-custodial sentence, as justice for such a vulnerable victim must be prioritized.

5. In line with the findings in the above report, it is my view that the applicant is not suitable to serve a non-custodial sentence. I therefore decline to release him under the decongestion exercise. The applicant shall serve his sentence to completion.
6. Orders accordingly.

RULING DELIVERED THIS 17TH DAY OF SEPTEMBER 2024.

D. KAVEDZA

JUDGE

