



**Ramtu v Republic (Miscellaneous Criminal Application
E107 of 2022) [2023] KEHC 1229 (KLR) (10 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1229 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E107 OF 2022**

A. ONG'INJO, J

FEBRUARY 10, 2023

BETWEEN

NASIB ALI RAMTU 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 (4) of the [Sexual Offences Act](#) No 3 of 2006 in Mombasa Chief Magistrates Court sexual offence No 58 of 2016.
2. The particulars of the offence are that the accused person on the June 21, 2016 at Ujamaa area in Likoni district within Mombasa county intentionally caused his penis to penetrate the vagina of MM a child aged 15 years.
3. Aggrieved by the decision of the trial court, the applicant preferred an appeal against the conviction and sentence in Mombasa High Court criminal appeal No 106 of 2019 where the decision of the lower court was upheld as follows: -

“In regard to sentencing, the trial magistrate having ascertained the age of the complainant as 15 years. The applicable section of the law under the [Sexual Offences Act](#) is 8(1) and 8 (4) which provides that a person found guilty of defilement of a minor between the age of 12 and 15 years is liable upon conviction to imprisonment for a term of not less than 20 years. The sentence meted out by the trial magistrate was therefore lawful and proper in the circumstances and is hereby upheld.”



4. Through a notice of motion application filed under certificate of urgency on October 17, 2022 and the supporting affidavit therein, the applicant prays that this honourable court be pleased to grant a review of the mandatory 20 years sentence imposed by the trial court magistrate.
5. The application is premised on grounds that the judicial officer who heard his case and sentenced him did not consider mitigation circumstances, that he did not have any criminal record, that he has been in the prison facility for a period of over 6 years with considerably good reputation, and that he is remorseful for his actions.
6. The applicant filed written submissions and stated that the mandatory minimum sentence of 20 years violates the right to fair hearing under article 50(2)(q) of the *Constitution*. The applicant also stated that pursuant to section 354(3)(a)(ii) of the *Criminal Procedure Code*, the court has wide powers to review the sentence imposed. The applicant cited the case of *Salim Kaingu v Republic*, HCCR App No 36 of 2019 at Malindi where Hon Lady Justice Njoki Mwangi reduced the appellant's sentence from 15 years imprisonment to 10 years imprisonment. The applicant also cited the case of *Phillip Mueke Mainigi & 5 others v Republic* in petition No E017 of 2021 at Machakos where Justice G V Odunga held that those who were convicted of sexual offences are at liberty to petition the High Court for orders of resentencing in appropriate cases. The applicant prayed that court considers the time served in remand pursuant to section 333(2) of the *Criminal Procedure Code*.
7. This court has established that the applicant defiled a child aged 15 years where he ought to have been charged under section 8 (1) as read with section 8 (3) of the *Sexual Offences Act* that attracts a sentence of not less than twenty years. However, the applicant was wrongly charged under section 8 (1) as read with section 8 (4) of the *Sexual Offences Act* which attracts a sentence of not less than 15 years imprisonment as follows: -

A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years.
8. According to the proceedings, the applicant was released on bond and sureties were approved by court on July 13, 2016. Therefore, the applicant's prayer that the court considers time served in remand pursuant to section 333 (2) of the *Criminal Procedure Code* does not stand.
9. In consideration of the precedent in *Joshua Gichuki Mwangi v Republic*, criminal appeal No 84 of 2015 where the Court of Appeal substituted a sentence of 20 years to 15 years where the complainant was 15 years, this court reviews the sentence to 15 years to run from the date the trial court imposed the sentence.

DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,

THIS 10TH DAY OF FEBRUARY 2023

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of: -

Ogwel- Court Assistant

Mr. Ngiri for the Respondent

Applicant present in person

HON. LADY JUSTICE A. ONG'INJO



JUDGE

