



**Koyala v Republic (Criminal Revision E061 of 2024)
[2024] KEHC 14453 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14453 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E061 OF 2024
RB NGETICH, J
NOVEMBER 14, 2024**

BETWEEN

JAMES KOYALA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant James Koyala was charged with two counts of offences. Count I is the offence of attempted rape contrary to section 4 of the *Sexual Offences Act* No 3 of 2006. The particulars of the charge were that the accused on the 21st day of August,2023 at around 2300Hours within Baringo County, intentionally and unlawfully attempted to cause his penis to penetrate the vagina of NLL without her consent.
2. Alternative to count I is the offence of committing indecent act with an adult contrary to section 11(a) of the *Sexual Offences Act* No 3 of 2006. The particulars of the charge were that the accused on the 21st day of August,2023 at around 2300Hours within Baringo County, intentionally and unlawfully touched the vagina and breast of NLL.
3. Count II is the offence of assault causing actual bodily harm contrary to section 251 of the Penal Code. The particulars of the charge were that the accused on the 21st day of August,2023 at around 2300Hours within Baringo County, unlawfully assaulted NLL thereby occasioning him actual bodily harm.
4. The Applicant denied the charges which culminated in the matter being set down for full trial and by judgement delivered on the 28th day of March,2024, the trial court found that the prosecution had proved the two main counts and proceeded to convict him accordingly. On 18th April,2024 the accused was sentenced to five years imprisonment as from 23rd August,2023. He has now approached



this court seeking review of his sentence so as to serve non-custodial sentence for the remaining period of sentence. He stated that he is remorseful for the offence and the victim has agreed to forgive him.

Social Inquiry Report

5. From the social inquiry report filed, the Applicant is 37 years old. He did not go to school as his parents wanted him to look after cattle. When he became a youth, he started practicing farming, charcoal burning and little casual jobs within the community as his own source of income. The Applicant is married with four children. Two of the Applicant's uncles stated that the applicant's major challenge is excessive alcohol consumptions and he may have been framed for the offence. They prayed for his release so that he can take care of his children but did not show any interest in assisting in supervision, re-integration and resettlement. Efforts to reach out to his siblings were futile. From the social inquiry, the Applicant has very little family support. The Applicant's wife relocated to Narok after his sentence. The applicant is attached at the industry department.
6. The Applicant maintains that he was framed by the victim over a land dispute issue. He prays for non-custodial sentence so that he can restart his life afresh and take care of his children who are currently under the custody of his brother in-law. He has served 14 months and he is remaining with 26 months to complete sentence.
7. The victim who is 64 years and a mother of eight children who are all adults is still bitter over what the Applicant did to her and says she still suffers neck and back pain and she is normally treated at a nearby medical facility. She expressed her unwillingness to forgive the Applicant and prefers the Applicant to complete his sentence in prison.
8. The village elder stated that he cannot believe the Applicant's allegation that the victim fabricated the attempted rape incident and he is not aware of the existence of land dispute between the Applicant and the victim as alleged by the Applicant.
9. The local administration stated that the Applicant is a common drunkard and habitual thief within the village. He is opposed to community-based rehabilitation noting that he has been in prison for a short period and further, his supervision will be of great difficulty since he lacks strong family support.

Determination

10. The application herein invokes the revisional jurisdiction of this court which gives the 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 mandated it to make appropriate orders to correct the impugned order, decision or sentence and align it with the law. The above is the import of Section 362 as read with Section 364 of the [*Criminal Procedure Code*](#).
11. 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.”

12. From the social inquiry report, the victim is still bitter and it's the local administration's view that due to alcoholism, it will be difficult to supervise the applicant within the community. He does not also demonstrate that he is remorseful. He still says he was framed up due to land dispute whereas the village elder is not aware of any land dispute. From sentiments given, the applicant is not suitable for community-based rehabilitation.

13. Final Orders :-

Application for review of sentence is hereby dismissed.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 14TH DAY OF NOVEMBER 2024.

RACHEL NGETICH

JUDGE

In the presence of :

Elvis, Court Assistant.

Ms. Ratemo for State.

Applicant present.

