



**Marende v Republic (Criminal Miscellaneous Application
E063 of 2023) [2025] KEHC 15391 (KLR) (28 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15391 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL MISCELLANEOUS APPLICATION E063 OF 2023**

**JN KAMAU, J
OCTOBER 28, 2025**

BETWEEN

MESHACK EVANS MARENDE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Introduction

1. The Applicant herein was charged with the offence of defilement contrary to Section 8(1) as read with Section 8(4) of the *Sexual Offences Act* Cap 63A (Laws of Kenya). He was also charged with an alternative charge of the offence of committing an indecent act with a child contrary to Section 11(1) of the *Sexual Offences Act*. He was convicted of the main charge and sentenced to fifteen (15) years imprisonment.
2. On 23rd February 2022, he filed an undated Notice of Motion application seeking a review of his sentence. He pointed out that he had been in prison for the past four (4) years and was reformed and transformed. He averred that he was arrested at the age of fifty-four (54) years and was currently fifty-eight (58) years old and suffering from a terminal illness and age-related complications. He sought a reduction of his sentence to a least severe sentence.
3. He also urged this court to consider the period he had spent in custody during Trial in accordance with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).
4. His undated Written Submissions were filed on 21st February 2025 while those of the Respondent were dated 24th March 2025 and filed on 25th March 2025. The Ruling herein is based on the said Written Submissions which parties relied upon in their entirety.



Legal Analysis

5. The Applicant invoked Article 165 of *the Constitution* of Kenya, 2010 and pleaded with court to grant him a lesser sentence since he had lost his wife and his sixty-three (63) years of age rendered him more vulnerable to the prison life. He added that he was also unable to take care of his children who had suffered loss due to his absence. Notably, he had indicated in his undated Notice of Motion application that he was aged fifty eight (58) years when he filed his said application.
6. He asserted that he was a first-offender and that he had related well with fellow inmates throughout his stay in prison. He expressed remorse and prayed for court's leniency. He sought a second chance to re-write his story, take care of his family and participate in nation building.
7. He pointed out that he had undergone spiritual and technical training which included Diploma in AFCM, Diploma in ISOM, Crime si poa and Health Certificate with the aim of being equipped to live well and generate income for his basic needs. He urged the court to allow his application.
8. On its part, the Respondent invoked Section 8(1) and 8(4) of the *Sexual Offences Act* and placed reliance on the case of Republic vs Jagani & Another (2001) KLR 590 where it was held that the purpose of sentence was to assist in rehabilitation of the offenders. It argued that the sentence meted out on the Applicant was to instill sense of responsibility for his actions and allow for his rehabilitation.
9. It further cited the cases of Shadrack Kipchoge Kogo vs Republic Criminal Appeal No 252 of 2003 (eKLR citation not given) and Benard Kimani Gacheru vs Republic [2002]eKLR where the common thread was that sentencing was an exercise of the trial court and that an appellate court would not interfere with sentence unless that sentence was manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong principle.
10. It contended that the sentence that was imposed upon the Applicant herein was too lawful as the *Sexual Offences Act* provided for fifteen (15) years as the minimum mandatory sentence. In that regard, it relied on the case of Supreme Court Petition No E018 of 2023 Republic vs Joshua Gichuki Mwangi (eKLR citation not given) where it was held that although sentencing was an exercise of judicial discretion, it was Parliament and not Judiciary that set the parameters of sentencing for each crime. It added that the Supreme Court also differentiated between mandatory sentences and minimum sentences and stated that mandatory sentences left no discretion to the judicial officer whereas minimum sentences set the floor rather than the ceiling of such sentences.
11. It urged the court not to interfere with the Applicant's sentence as it was proper. It was, however, not opposed to his prayer under Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya). It cited the case of Ahamad Abolfathi Mohammed & Another vs Republic [2018]eKLR where it was held that courts were obliged to take into account the period that the accused spent in custody during trial.
12. The Applicant herein was sentenced under Section 8(1) as read with Section 8 (4) of the *Sexual Offences Act*. The said Section 8(4) of the *Sexual Offences Act* provides 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.”
13. This court could not fault the Trial Court for having sentenced him to fifteen (15) years imprisonment as that was lawful.



14. In the case of Joshua Gichuki Mwangi vs Republic [2022] eKLR, the Court of Appeal reiterated the reasoning in the case of Dismas Wafula Kilwake vs Republic [2018] eKLR where it held that Section 8 of the *Sexual Offences Act* had to be interpreted so as not to take away the discretion of the court in sentencing offences and held that it was impermissible for the legislature to take away the discretion of courts and to compel them to mete out sentences that were disproportionate to what would otherwise be an appropriate sentence.
15. However, in a decision that was delivered on 12th July 2024, the Supreme Court overturned the decision of the Court of Appeal in the case Joshua Gichuki Mwangi vs Republic (Supra) and stated that the Court of Appeal had no jurisdiction to exercise discretion on sentences that had a mandatory minimum sentence.
16. As this court was bound by the decisions of courts superior to it, its hands were tied regarding exercising its discretion to reduce the Applicant's sentence. It had no option but to leave the said sentence that was meted against him undisturbed.
17. Going further, Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya) provides that:-

“Subject to the provisions of section 38 of the Penal Code (cap 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody” (emphasis court).
18. Further, Clause 4.6.20 (ix) of the Judiciary Sentencing Policy Guidelines provides that:-

“The Sentencing Court shall be guided by the sentencing principles and objectives set out in Part I of these the Guidelines in all resentencing hearings. The following mitigating factors were set out by the Supreme Court as particularly relevant in a resentencing hearing:...

(ix) Time already spent in prison by the convict...”
19. The requirement under Section 333(2) of the Criminal Procedure Code was restated by the Court of Appeal in Ahamad Abolfathi Mohammed & Another vs Republic (Supra).
20. Notably, the Charge Sheet indicated that the Applicant was arrested on 17th January 2018. Although, he was granted bond, he did not seem to have posted the same. He was sentenced on 30th May 2018. A reading of the Trial Court's decision indicated that the Learned Trial Magistrate did not consider he had spent in custody during trial. That was a period that ought to be taken into account while computing his sentence in accordance with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).

Disposition

21. For the foregoing reasons, the upshot of this court's decision was that the Applicant's undated Notice of Motion application filed on 23rd February 2022 was not merited save for his prayer under Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya). His conviction and sentence be and are hereby upheld as they were both safe.



22. However, for the avoidance of doubt, the period between 17th January 2018 and 29th May 2018 that he spent in custody during trial be and is hereby taken into account while computing his sentence in accordance with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).

23. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 28TH DAY OF OCTOBER 2025

J. KAMAU

JUDGE

