



**Onacha v Republic (Criminal Miscellaneous Application
E045 of 2025) [2025] KEHC 15629 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15629 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL MISCELLANEOUS APPLICATION E045 OF 2025**

**JN KAMAU, J
OCTOBER 30, 2025**

BETWEEN

SAMSON OVEYI ONACHA 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. The Trial Court further considered the time he had spent in custody and ordered that he serves twelve (12) years imprisonment.
2. On 13th March 2024, he filed a Notice of Motion application dated 13th September 2023 seeking a review of his sentence. He placed reliance on Articles 27 and 50(2)(p) of *the Constitution* of Kenya, 2010 and sought for reduction of his sentence to a lesser sentence.
3. His Written Submissions were dated and filed on 3rd February 2025 while those of the Respondent were dated 13th February 2025 and filed on 15th February 2025. The Ruling herein is based on the said Written Submissions which parties relied upon in their entirety.

Legal Analysis

4. A reading of the Applicant's Written Submissions indicated that he submitted on the merits of his conviction only. He did not mention anything with regard to order sought herein. As such, this court disregarded the same.



5. On its part, the Respondent invoked Section 8(1) and 8(4) of the *Sexual Offences Act* and Section 329 of the Criminal Procedure Code 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.
6. 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.
7. It contended that the sentence that was imposed upon the Applicant was too lenient as the *Sexual Offences Act* provided for fifteen (15) years as the minimum mandatory sentence prescribed by law. 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 sets 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. It, therefore, urged the court not to interfere with the Applicant's sentence.
8. The Applicant herein was sentenced under Section 8(1) as read with Section 8 (3) 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.”
9. This court could not fault the Trial Court for having sentenced him to fifteen (15) years imprisonment as that was lawful.
10. 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.
11. 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.
12. 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 the Applicant herein undisturbed.



Disposition

13. For the foregoing reasons, the upshot of this court's decision was that the Applicant's Notice of Motion application dated 13th September 2023 and filed on 13th March 2024 was not merited and the same be and is hereby dismissed. His conviction and sentence be and are hereby upheld as they were both safe.
14. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 30TH DAY OF OCTOBER 2025

J. KAMAU

JUDGE

