



**Yusuf v Republic (Criminal Miscellaneous Application E250 of 2024)
[2025] KEHC 16833 (KLR) (14 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16833 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL MISCELLANEOUS APPLICATION E250 OF 2024
WM KAGENDO., J
NOVEMBER 14, 2025**

BETWEEN

YUSUF AHMED YUSUF APPLICANT

AND

THE REPUBLIC RESPONDENT

(Originating from CR. CASE NO. 400/2015 at Mombasa – Hon. R. Ondengo, SPM, and HCCR APP NO 145/2016 at Mombasa)

RULING

- 1 The application was brought under section 364, 216, And 329 Of The Criminal Procedure Code And I Section 8(1) Of The *Sexual Offences Act* And Section 6 Of The Criminal Procedure Code
- 2 The Applicant, Yusuf Ahmed, is an adult currently serving a life sentence at Shimo La Tewa Maximum Security Prison for the offence of defilement.
- 3 The Respondent is the Director of Public Prosecutions (DPP), an office established pursuant to Article 157 of *the Constitution*, mandated to institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect of offences recognized by the laws of Kenya.

Legal Foundation Of The Application

- 4 Section 364(1)(b) of the Criminal Procedure Code which states :

In the case of a proceeding in a subordinate court, the High Court may – (b) in the case of any other order, other than an order of acquittal, alter or reverse the order.



5 Sections 216 and 329 of the Criminal Procedure Code which states:

The court may, before passing sentence, receive such evidence as it thinks fit to inform itself as to the proper sentence to be passed.

6. Section 8(1) of the *Sexual Offences Act*:

1. A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.

Background Facts.

- a. The Applicant was arrested, charged, tried, convicted, and sentenced to life imprisonment for defilement contrary to Section 8(1) of the *Sexual Offences Act* in CR. Case No 400/2015, Mombasa, Hon. R. Ondengo, SPM).
- b. The Applicant's appeal in the High Court (HCCR APP NO 145/2016) was dismissed, leaving the life sentence intact.
- c. The Applicant states that he was a first-time offender, and this Hon. Court is respectfully requested to consider this as a mitigating factor.
- d. The Applicant left behind a jobless wife and three children, all of whom have suffered significantly during his absence.

Reliefs Sought

7 The Applicant prays that this Hon. Court be pleased to review the sentence in consideration of the stated mitigating factors, particularly the welfare of his dependent children and grant any other order this Hon. Court deems fit.

8 The Applicant, submitted that he was aggrieved by the sentence of life imprisonment, and he approaches this Hon. Court seeking review of the sentence in light of mitigating circumstances.

9 That the original sentence was imposed on the basis of the misconception that the penal law was mandatory, leaving no discretion to impose a lesser or alternative sentence. Subsequent jurisprudence has declared that mandatory minimum sentences are unconstitutional, allowing courts to impose sentences proportionate to the offence committed.

10 On mitigation he relied on Sections 216 and 329 of the CPC which involve reducing the severity of a sentence, the Black's Law Dictionary (2nd Ed.):

which defines mitigation as "Mitigation is the alleviation, abatement, or diminution of a penalty or punishment imposed by law. Mitigating circumstances do not justify the offence but may reduce moral culpability."

11 The Judiciary of Kenya Sentencing Policy Guidelines outlines the objectives of sentencing as hereunder:

Retribution – just punishment for criminal conduct.

Deterrence – discouraging the offender and others from committing similar offences.

Rehabilitation – reforming the offender into a law-abiding citizen.

Restorative Justice – addressing losses suffered by victims.



Community Protection – safeguarding society by incapacitating the offender.

Denunciation – communicating society’s condemnation of criminal conduct.

- 12 The Applicant relied on *Vinter & Others v. The United Kingdom* (Applications No’s 66069/09, 130/10, and 3896/10), which held that:

Prisoners cannot be detained unless there are legitimate penological grounds for detention... The balance between punishment, deterrence, public protection, and rehabilitation may shift over the course of a sentence. Review of detention is appropriate to evaluate these factors.”

Mitigating Factors

- 13 At the time of conviction, the Applicant had a wife, three children, siblings, and a sick mother, all of whom have endured hardship in his absence.

- 14 He cited the case of *Julius Kitsao Manyeso v. Republic* which stated that;

Mandatory life sentences deny convicts the opportunity to be heard in mitigation. This constitutes unjustifiable discrimination and violates Articles 27 and 28 of *the Constitution*. Prisoners should have the opportunity for rehabilitation and prospects of release if rehabilitation is achieved.”

- 15 The Applicant requests the Hon. Court to consider his conduct and circumstances during detention. Once the objectives of punishment—retribution, deterrence, rehabilitation, restorative justice, community protection, and denunciation—are achieved, continued incarceration is unnecessary.

- 16 A The sentence review report was prepared by Mr. Stephen Muthoka and it states that the Applicant is suitable for non-custodial sentencing or sentence review.

- 17 The Applicant could be considered for a definite term reduction or probation of 3 years, given his advanced age of 65 years.

Court Findings

- 18 The Applicant had raised the issue of sentence in Appeal No. 145 of 2016. The High Court found the sentence to be lawful.

- 19 The complainant was 9 years old, and Section 8(1) of the *Sexual Offences Act* mandates a life sentence.

- 20 In this case, the Applicant was the survivor’s spiritual teacher, a person who exercised authority over him and was expected to protect the minor. Instead, he abused his position, turned into a predator and stole the child’s innocence, and caused lifelong trauma.

- 21 The Applicant was and remains a danger to society, and should remain in custody for the rest of his life.

- 22 It is also noted that no attempts were made to trace the survivor to assess his welfare.

- 23 Considering the gravitas of the offence, the fact that the Applicant abused his position of trust over a vulnerable child, and the lifelong trauma caused to the survivor, this Hon. Court finds that a harsh sentence was necessary to reflect the seriousness of the crime, protect society, and serve as a deterrent to others. The application is therefore dismissed.

DATED, SIGNED, AND DELIVERED AT MOMBASA THIS 14TH DAY OF NOVEMBER, 2025.



..JUDGE HIGH COURT OF KENYA AT MOMBASA IN THE PRESENCE OF:

Applicant in person State Mr Ngiri

Court Assistant Bebora

”

Signed By/for:

HON. LADY JUSTICE WENDY MICHENI

THE JUDICIARY OF KENYA.

Mombasa High Court High Court Criminal Date: 2025-11-15 22:29:12

