



**THE REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MAKUENI**  
**CRIMINAL MISC. APPL. NO. E012 OF 2025**

**DAVID MUTUA KELLY .....**

**.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

**1)** Before me is the undated notice of motion brought under Article 50 (2) (q) and Article 165(6) of the Constitution section 8 (2) of the Sexual Offences Act.

It seeks:-

**1.** *That, the honourable court be pleased to revise the remaining sentence in line with section 8(2) of the CSO Act.*

**2.** *That, the applicant be exempted from paying court fees as he is a pauper.*

2) It is based on:-

1. *That the applicant was charged before the RM at Makindu with the offence of possession of wildlife trophy c/s 95 arw section 105 of the Wildlife conservation and management Act 2013 in Criminal Case No.524 of 2018 and sentenced to serve a custodial term of seven (7) years.*
2. *That the applicant is a first-time offender*
3. *That the applicant was the breadwinner to his young family*
4. *That the applicant is remorseful and regrets his actions.*
5. *That the applicant isn't contesting the conviction and sentence but rather pleading for leniency in the line with section 8 (2) of the CSO ACT.*
6. *That the applicant has undertaken several rehabilitative programs.*
7. *That the applicant is left with 20 months to serve as at time of filing this application.*

The applicant has filed a supporting affidavit where he depones

1. THAT, the applicant is an inmate at Machakos Main G.K. Prison serving a Seven (7) years custodial sentence for the offence of possession of wildlife trophy
  2. THAT, I am a first offender
  3. THAT, I am remorseful and deeply regret my actions now having learnt that crime doesn't pay.
  4. THAT, I have no intention whatsoever to file an appeal.
  5. THAT, I am remaining with 20 months left to serve as at time of filing this application.
  6. THAT, I now approach this Honourable Court seeking for a non-custodial sentence based on mitigating factors highlighted in the Notice of Motion
  7. THAT it is in the Interest of Justice that the prayers sought be granted as humbly prayed.
- 3) The lower court file Makindu MCCR 524/2018 has been missing leading to several summons to the court Administrator to appear and provide an explanation.
- 4) What has been brought is a "2<sup>nd</sup> Skeleton file" which does not bear;

- *The charge sheet*
- *The committal warrant*
- *Judgment*

This forced the court to direct the prison authorities to see what documents could be availed to court from their records / the applicant's possession.

It is noteworthy that the PAS Officer in POR Ref No. PS/3/3/Vol. 4/33 dated 3/6/2025 (6 pages) could do a complete report without reference to the Lower Court File and still proceed to make recommendations from perusing "the court file MCCR A No. E012/2025 for the appellant.

5) Evidently the officer has not schooled themselves on the nomenclature users by court despite being a Court Officer.

**Delivered, signed and dated this 22<sup>ND</sup> Day of December, 2025**

.....  
**Hon. Mumbua T. Matheka**  
**Judge**

Court Assistant - Chrispol  
Prosecutor - Kazungu  
Accused -

Counsel for the Accused -