



**Juma alias Chief v Republic (Criminal Revision E460 of 2025)
[2026] KEHC 2542 (KLR) (25 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2542 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL REVISION E460 OF 2025
WM KAGENDO., J
FEBRUARY 25, 2026**

BETWEEN

JOSEPH ACHOLA JUMA ALIAS CHIEF APPLICANT

AND

THE REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with and convicted of the offence of defilement contrary to Section 8(1) as read with Section 8(3) of the *Sexual Offences Act* and was sentenced to ten (10) years' imprisonment.
2. The Applicant's circumstances were brought to the attention of this Court during a routine supervisory visit to the correctional facility. Upon being presented before Court, it was observed that he is in dire medical condition. A comprehensive report was subsequently filed by the Probation Officer, Ms. Asha Gozi, together with the prisoner's progressive report and a medical report from Kilifi County Referral Hospital.

Constitutional and Legal Framework

3. This application is considered within the framework of *the Constitution* of Kenya, 2010, particularly Article 28, which guarantees every person the right to inherent dignity and the right to have that dignity respected and protected.
4. The Supreme Court in *Francis Karioko Muruatetu & Another v Republic* emphasized that sentencing must be individualized and must accord with constitutional values, including human dignity, proportionality, and fairness. The Court underscored that punishment must not be cruel, inhuman, or degrading and that courts must consider the personal circumstances of an offender.



5. Further, in *Bernard Kimani Gacheru v Republic* [2002] eKLR, the Court of Appeal affirmed that sentencing is a matter of judicial discretion, which must be exercised judiciously and in accordance with established principles of justice.
7. Section 4 of the *Probation of Offenders Act* empowers the Court to release an offender on probation where, having regard to age, character, antecedents, health, or other extenuating circumstances, it is expedient to do so.

Analysis

8. The material placed before the Court indicates that the Applicant is a 62-year-old man suffering from diabetes, blurred vision, and neuritis affecting his nervous system. He requires a special diet, consistent medication, and close medical supervision. The reports indicate that these needs are not adequately met within the prison facility.
9. His condition has rendered him physically weak and dependent. The management of his medical needs within the correctional environment has become physically, mentally, and psychologically taxing, both to himself and to other inmates who inevitably assist him in daily activities.
10. The Court notes that incarceration should not operate in a manner that diminishes the inherent dignity of a person. Where continued detention results in suffering that goes beyond the lawful objectives of punishment and veers into indignity or inhumanity, the Court is duty-bound to intervene.
11. The Applicant has demonstrated remorse and a willingness to reintegrate into society. There is no material before this Court suggesting that he poses a continuing danger to the community. In his present frail state, he is not a threat to society. On the contrary, his continued incarceration primarily exacerbates his suffering and places undue strain on fellow inmates within the correctional setting.
12. Sentencing must meet the objectives of justice, rehabilitation, and proportionality. In the peculiar circumstances of this case, the continued custodial sentence would not advance those objectives and would risk undermining the Applicant's constitutional right to dignity.

Determination

13. Having carefully considered: The Applicant's advanced age and grave medical condition; His demonstrated remorse and rehabilitation progress; The constitutional imperative to safeguard human dignity under Article 28; and The need to ensure that imprisonment does not result in inhuman or degrading treatment,
14. I am satisfied that this is an appropriate case for the substitution of the custodial sentence with a non-custodial one.
13. Accordingly, the sentence of ten (10) years' imprisonment is hereby reviewed to the period already served.
14. The Applicant is sentenced to three (3) years' probation under the supervision of the Probation Department in close liaison with the area chief.
15. The Court notes that the Applicant has a permanent residence in Kisumu and that his immediate family members are willing and ready to receive and care for him. The area Chief shall file monthly compliance reports before this Court to ensure adherence to the probation terms.

It is so ordered.



DELIVERED, DATED AND SIGNED AT MOMBASA THIS 25TH DAY OF FEBRUARY 2026.RULING DELIVERED THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM.

HON. WENDY KAGENDO MICHENI

JUDGE

In the presence of:

Applicant

State Counsel

Probation Officer

Signed By/for:

Hon. Lady Justice Wendy Micheni

The Judiciary Of Kenya.

Mombasa High Court High Court Criminal Date: 2026-02-27 18:32:21

