Nyabute v Republic (Miscellaneous Criminal Application E118 of 2025) [2026] KEHC 4296 (KLR) (13 March 2026) (Ruling)

Neutral citation: [2026] KEHC 4296 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT HOMA BAY

MISCELLANEOUS CRIMINAL APPLICATION E118 OF 2025

PJO OTIENO, J

MARCH 13, 2026

BETWEEN

THOMAS ATIENO NYABUTE ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. Before the court is an application by the appellant, an inmate serving a prison term of 40 years, for the offence of defilement contrary to section 8 (1) as read with section 8 (3) *Sexual Offences Act*.

2. He asserts to have been in prison custody since arrest because even though he was granted bond on terms, he was unable to raise the terms. It is said that the applicant is currently aged 52 years is very remorseful and reformed and fears that if he were to serve the full term he could be 79 years at the end of the term.

3. He pleads for a chance to be released so that he re-joins his family for the remaining short period he has to live adding that he suffers depression due to the solidary life in prison.

4. When served, the prosecution counsel filed written submissions and partially conceded to the application to the limited extend of application of section 333 (2) CPC.

5. On own motion, the court directed the two counsel to address it on the consequences of the binding decision in Republic – vs – Joshua Gichuki Mwangi, Supreme Court, Pet No. 18/2024.

6. Pursuant to such invitation the advocate of the applicant took the position that the statute prescribes a minimum penalty of 20 years hence the applicant was by dint of Article 50(2)p, entitled to the least of the prescribed sentence. He added that the applicant had undergone a skill training and acquisition while in prison and that the commandant had recommended him for leniency.

7. For the prosecution counsel, the position taken was that the law restricts when the high court may interfere with a sentence imposed by the trial court being a discretionary matter.

8. She stressed the fact that there was proof that the applicant had defiled three children hence an aggravating factor, and therefore there were good reasons for the court to impose the severe sentence of 40 years.

9. The court views the application to be that of revision pursuant to section 362 and 364 criminal procedure code. The jurisdiction of court under the law is to seek and determine if there was any incorrectness, illegality or impropriety of the sentence recorded.

10. The court views section 8(3) *Sexual Offences Act* to prescribe the least sentence permitted. The now binding precedent from the Supreme Court, is that there is no discretion to impose a sentence lower than that prescribed under the Act. It was thus obligatory upon the trial court to impose any sentence provided it was not less than 20 years.

11. The flipside is that were the minimum sentence is prescribed there is a legal requirement that the trial court, when minded to entrance the same, gives its reasons and records same.

12. In this matter while there is evidence that the applicant was charged with the defilement of three children aged between 12 and 15 years, he was only convicted on two counts and in the recorded sentence there is no reason advanced to justify the sentence that doubles the statutory minimum.

13. The court thus find that in imposing the jail term of 40 years, the trial court denied the applicant the benefit of the least prescribed sentence without any plausible reasons.

14. That was an error the court will correct by setting aside the sentence and substituting therefore a sentence of 20 years to be computed from the 6/5/2012.

15. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 13TH DAY OF MARCH, 2026.

PATRICK J O OTIENO

JUDGE