

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT VIHIGA**

**CRIMINAL MISC APP NO. E020 OF 2026**

**IN THE MATTER OF ARTICLE 27, 29, 2, 20, 28, 10, 57 and 165 OF THE  
CONSTITUTION**

**AND**

**IN THE MATTER OF INTERNATIONAL PRINCIPLES OF LAW UNDER  
ECHR AND ARTICLE 10(3) OF THE ICCPR OF 1966**

**AND**

**IN THE MATTER OF SECTION 26(2) OF THE PENAL CODE**

**GILBERT  
APPLICANT**

**CHEMEI.....**

**VERSUS**

**REPUBLIC.....**

**RESPONDENT**

1. Before this Court is a Notice of Motion dated 27<sup>th</sup> March 2026, the Applicant seeks the following orders:
  - a. *Spent.*
  - b. *The applicant be treated as a pauper and the costs for application be waived.*
  - c. *Equity under the rule of natural justice and dignity in a humanistic aspect be the key principle in the determination of this application*
2. Grounds for application:
  - a. *That, the applicant had been arrested on the 17<sup>th</sup> day of July, 2009, charged with defilement contrary to Section 8(1) as read with 8(2) of the SOA NO. 3 OF 2006, tried, convicted and sentenced to life imprisonment.*

- b. *That, from the arrest to sentencing upon conviction, the applicant had been in custody and having his appeal failed and dismissed in entirety by both the first appellate Court at Kakamega and the Court of Appeal in Kisumu, he has now been behind bars; and has served a cumulative term of 17 years imprisonment.*
- c. *That, having exhausted all his appeals and now aged 75 years old and being an older member of the society, he has been informed of this as the only available option which would enable him to fully participate in the affairs of the society, pursue personal development. to live in dignity and respect and be free from abuse; as provided for under Article 57(a-d) of the constitution and most importantly to enjoy his sunset days in liberty.*
- d. *That, the appellant urges this Hon. Court to invoke equity as a principle of natural justice which allows a fair judgment even in situations not covered by law and to also consider human dignity in a humanistic approach to human rights.*
- e. *That, the appellant has shown reforms and has undertaken several Biblical courses to Diploma levels as evidenced in the testimonials;*
- *AFCM 1*
  - *EMMAUS BIBLE SCHOOL.*
  - *AFCM 2.*
  - *Diploma in Theology and Biblical Studies under International School of Ministry.*
- f. *He is well spiritually nourished and transformed, safe and ready to integrate back into the society as a valuable citizen and as one who no longer poses any threat to society.*
- g. *That, the applicant is very sorry and remorseful for the wrong actions of lawlessness, pleads for a chance, promises to be law abiding and is voluntarily ready to retribute to the society thus his pleading to be released as the old age has emerged with age related complications*

*which also make him a burden to the prison administration and fellow prisoners*

*h. Reasons wherefore; the applicant humbly prays to be released on humanitarian grounds by invoking provisions which would promote the respect to human rights and in particular his dignity alongside any orders this Hon. Court deems fair and just.*

3. In support of the application is the annexed affidavit of one Gilbert Chemei who deponed as follows:

*a. That I am a male adult of sound mind and the applicant in the matter herein hence competent to swear this affidavit.*

*b. That, I had been arrested on the 17<sup>th</sup> day of July 2009, charged with the offence of defilement contrary to section 8(1) as read with 8(2) of the Sexual Offences Act No. 3 of 2006 upon which I was tried, convicted and eventually sentenced to life imprisonment.*

*c. That, throughout the entire trial, I was in custody and now having exhausted my chances of appeals which were fatal and a failure due to dismissals in entirety and the upholding of both the conviction and sentence and having been now under incarceration for the past seventeen (17) years, and at an old age of 75 years which makes me an older member of society. I have been deeply involved of the need of initiating this proceeding as the only available avenue for me to seek for freedom if that which would enable me to finally enjoy such rights during my sunset days as full participation in the affairs of society, the pursuing of personal development, and most importantly the living in dignity and respect and being free from abuse; all as provided under Article 57(a-d) of the constitution.*

*d. That, I am humbled and urge this Hon. Court to invoke and dwell on the provisions that enforce dignity and human rights; and humanity in the consideration of my age and the prospects of reformation, rehabilitation and transformation as the guiding principles. May EQUITY as an aspect of the True National Justice be considered to an extent of*

*allowing a fair judgment even where the same is not captured in law so that in the same breath and respect the law may speak but with a human voice.*

- e. That, I am very sorry and remorseful for my actions of lawlessness which have made me a captive but I am convicted of being spiritually transformed through the various biblical courses which led to the awards of several Diplomas from different Bible schools as tendered through the testimonials and I confirm of being of value to the society, no longer a threat to the society, safe and ready to re-integrate back into the society.*
- f. That, in my pleading for a second chance and liberty, I acknowledge the need for atoning to my offence and I am much ready and willing to expiate and retribute to the community. May my old age be considered a great cause of tribulation as it has come with it the age related complications which make me a burden both to the prison administration and to my fellow prisoners.*
- g. That, it is my humble pleading that I be released on humanitarian grounds and may the provisions of law which promote the respect to human rights and specifically the right to dignity for the aged be invoked.*

## **Decision**

- 4. The Applicant in this case is serving life imprisonment for the offence of defilement under Section 8(1) & 8(2) of the Sexual Offences Act. In passing sentence, the trial Court was acknowledging the legislature express provisions on punishment in respect of the offence in which the victim is aged below 11 years. The penalty provision sets out that any person or offender who is found guilty and convicted for the offence under this section is liable to be imprisoned for life.
- 5. In determining an appropriate sentence, it is now trite law that the Court takes into account the main objective of criminal punishment namely

retribution, prevention of crime and the deterrence of criminals as well as the possibility of rehabilitating them in the course of serving sentence. The deterrence principle of punishment aims to prevent the offender from the society who have suffered as a result of his or her unlawful acts like in this case the offence defilement sends a strong signal for those who are out there who might be desiring to defile young children or minors and also to speak to this kind of abomination by sex predators.

6. The emphasis on this kind of punishment is not on the crime itself but the harm caused to the victim and the deterrent effect which punishment may have on the offender himself. When looking at this kind of offences of defilement as defined under Section 8(1) & 8(2) the aggravating factors outweigh any mitigation that may apply in favour of an accused person or in this case the Applicant. The litigation on life imprisonment under the Sexual Offences Act has not only be discussed by the High Court and the Court of Appeal, incidentally it found its way to the Supreme Court in the case of **Republic v Manyeso petition No. E013 of 2024 [2025] KESC 16 KLR** the Court held *inter alia* that Courts have no jurisdiction to amend the legislative scheme as enacted by the legislature with regard to the prescribed sentence of life imprisonment for the offence of defilement under Section 8(1) as read with (2) of the Act, that to impose an alternative sentence as akin to terminable period imposed by the Court of Appeal which substituted the life imprisonment with 40 years custodial sentence was an act of exercise of excess of jurisdiction.
7. Therefore, what the Applicant is asking this Court to do is to amend the provisions on life imprisonment as enacted by parliament for this offence so that the sentence can be reviewed and substituted with an alternative of a custodial sentence. In line with the Supreme Court decision this Court likewise has no jurisdiction. The application is dismissed under Section 382 of the Criminal Procedure Code.

**DATED AND DELIVERED VIA CTS AND EMAIL AT VIHIGA THIS 6<sup>TH</sup>  
DAY OF MAY 2026**

.....  
**R. NYAKUNDI**  
**JUDGE**