



REPUBLIC OF KENYA



**Yator v Republic (Criminal Revision E049 of 2024)
[2025] KEHC 1225 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1225 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E049 OF 2024
RB NGETICH, J
FEBRUARY 27, 2025**

BETWEEN

WILLIAM KIPLAGAT YATOR APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant, William Kiplagat Yator was charged with the offence of Defilement contrary to Section 8(1) as read with Section 8(3) of the [Sexual Offences Act](#) No 3 of 2006.
The particulars of the charge were that on the 10th day of May, 2018 at around 1400 Hours at Baringo Central Sub-County within Baringo County, the accused willingly and unlawfully caused his penis to penetrate the vagina of L.K a girl aged 13 years in contravention to the said Act.
2. The alternative charge was the offence of Indecent Act with a child contrary to Section 11 of the [Sexual Offences Act](#) No 3 of 2006. The particulars of the charge were that on the 10th day of May, 2018 at around 1400 Hours at Baringo central Sub-County within Baringo County, the accused willingly and unlawfully caused his penis to touch the vagina of L.K a girl aged 13 years in contravention to the said Act.
3. The accused denied both the main and alternative charge and upon hearing and determination of the matter, he was found guilty, convicted and sentenced to serve 20 years imprisonment. The applicant filed an appeal on both the conviction and sentence vide Kabarnet High Court Criminal Appeal No E057 of 2021 which was dismissed in its entirety.

Application for Review of Sentence

4. The Applicant has now approached this court vide application dated 27th March, 2024 seeking sentence review under Section 362 as read with Section 364 of the [Criminal Procedure Code](#) and Article



50(2), (p) of the Constitution of Kenya, 2010 seeking review of his 20 year sentence on ground that he is a widower and all his children left either for employment or after marriage leaving his property unattended. He further stated that he is 68 years old and has been ailing for 12 years now; he prayed unconditional discharge.

5. Further that considering that his sentence was mandatory in nature, the court was denied discretion to impose an appropriate or lesser sentence hence violating his right under Article 50(2)(p) of the Constitution of Kenya and relied on the case of Philip Mueke Maingi and others v Odpp and A.G. He further states that the trial court failed to comply with Section 333(2) of the Criminal Procedure Code as the period he served in remand custody was not considered during sentencing; that the remand period commenced on 10th May, 2018 to his sentencing on 3rd October, 2019 which is about 1 year, 4 months and 23 days. He stated that he is remorseful and urged this to exercise discretion and either reduce sentence or release him.

Social Inquiry Report

6. This court called for a social inquiry report. From the report, the Applicant dropped out of school due to his own personal will. He became a herder within the community. He is married and his wife is currently at Nairobi with his maternal uncles. The Applicant is living positive and adhering to his drug taking. He has very little interactions with his siblings plus the sons. At the custody the Applicant is involved in general cleanness activity.
7. The accused's brother supports applicant's prayer for review of sentence to community-based rehabilitation sentence. He undertakes to support the applicant if released on non-custodial sentence.
8. Circumstances surrounding the offence are that the Applicant found the victim on her way to the river to fetch water and pulled her to a nearby bush and defiled her knowing very well that the victim is mentally challenged. The victim's sister upon learning of the inciting reported the matter to the nearest police station leading to the Applicant's arrest and subsequent charge and arraignment in court.
9. The Applicant prays for the 20-year imprisonment to be reduced to 10 years his ground being advanced age. He also prays for his sentence to start from the time he was arrested. The applicant says he plans to relocate back to his home and restart his life afresh.
10. The primary victim was not available for interview due to her mental challenge, however social inquiry reveals that she is currently aged 18 years and a young mother of a baby aged two years and she is not involved in any economic activity within the community. The secondary victims who were available for interview were the mother and the elder brother. The mother is not opposed the Applicant's prayer for revision of sentence to a non-custodial sentence so that he can restart his life afresh.
11. The victim's elder brother is opposed to the applicant's prayer for review of sentence on ground that the applicant took advantage of the sister's mental condition and the fact that at the time of the incident, there was no one at home. He further stated that following demise of their father, their mother developed a relationship with their mother and their mother stayed with the applicant at his home leaving him and his siblings without care of their mother and he is fearful that the applicant if released will take their mother again.
12. The local administration opposed revision of applicant's sentence to a non- custodial sentence on ground that the applicant took advantage of the victim knowing very well that she was mentally challenged and also had a relationship with the victim's mother. The local administration further stated that the applicant has been in custody for a very short period and confirmed that victim is currently a



mother of a child aged two years and at community level they do not know the child's father and the child is being taken care of by the victim's siblings.

Determination

13. The Court of Appeal in the case of *Ogolla s/o Owuor v Republic*, [1954] EACA 270, pronounced itself on revision of sentence as hereunder:-

“The Court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors.”

14. The other principle to be considered is whether the sentence is manifestly excessive in view of the circumstances of the case. In the case of *Shadrack Kipkoech Kogo v Republic* Eldoret Criminal Appeal No 253 of 2003 the Court of Appeal stated thus:-

“Sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered (see also *Sayeka v R.* (1989 KLR 306).”

15. Further, the Court of Appeal, in *Bernard Kimani Gacheru v Republic* [2002] eKLR restated that:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist.”

16. Record show that the victim herein was a minor aged 13 years who is mentally challenged. The penalty is therefore under Section 8(3) of the *sexual offences Act* (SOA). Sentencing is exercise of discretion by the trial court which should not be interfered by superior court unless the trial court acted upon wrong principles or overlooked some material factors or took into account irrelevant factors or short of this, the sentence is illegal or is so inordinately excessive or patently lenient as to be an error of principle (See *Shadrack Kipkoech Kogo v R.*, & *Wilson Waitegei v Republic* [2021] eKLR).

17. There is no doubt that the applicant who was in a relationship with the victim's mother took an unfair advantage of the mental condition of the victim herein to satisfy his selfish sexual desires. It is worth noting that the penalties provided for under the *sexual offences Act* (SOA) is a reflection of the legislature's intention to protect the rights of the child and amplify the seriousness of sexual offences against children who are defenseless in the hands of adults who are meant to provide them security/protection against harmful and unfair practices.

18. Upon considering circumstances surrounding the offence herein and sentiments given by people interviewed by the probation officer, I find sentence imposed appropriate in the circumstances. I see no reason to interfere with the trial court's decision on the sentence but will allow prayer for period



served in remand to be considered in computing the sentence as provided for under Section 333(2) of the *Criminal Procedure Code*.

19. Final orders: -

1. Prayer for review of sentence is hereby dismissed.
2. Period served by the applicant in remand to be computed in the sentence imposed by the trial court.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 27TH DAY OF FEBRUARY 2025.

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RACHEL NGETICH

JUDGE

In the presence of:

Ms. Bartilol for the State.

Applicant – present.

Court Assistant – Elvis.

