



**Cherutich alias Orio v Republic (Criminal Revision
E003 of 2025) [2025] KEHC 6790 (KLR) (27 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6790 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E003 OF 2025
RB NGETICH, J
MAY 27, 2025**

BETWEEN

EVANS KIBET CHERUTICH ALIAS ORIO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Evans Kibet Cherutich alias Orio was charged with the offence of Rape contrary to section 3(1)(c) of the *Sexual offences Act* No. 3 of 2006. The particulars of the charge were that the Applicant on the 16th day of March, 2021 at around 2100Hours at [Particulars withheld] village in [Particulars withheld] Sub- County within Baringo County intentionally and unlawfully caused his penis to penetrate the vagina of LK without her consent in contravention of the said *Act*.
2. The applicant denied the charge and upon hearing, by judgment delivered on the 23rd March, 2023 the trial court found the accused guilty of Rape, convicted and subsequently sentenced him to 10 years imprisonment 30th March, 2023 to start from 19th March, 2021.
3. The Applicant has approached this court vide an undated application seeking review of his sentence to allow him complete the remaining sentence on non-custodial sentence. He avers that he has served a period of 3 years and 9 months in prison and that he is the sole bread winner for his family of four. He says he has enrolled in various church activities while in prison and has got certificates on various fields. He is now remaining with 2 years and 8 months to complete sentence.
4. The prosecution urged this court to call for a social inquiry report before they could respond to the Application and the report was filed as directed.



Social Inquiry Report

5. From the report, the Applicant dropped out of school in class 7 in the year 2009 due to his own personal will having lost hope in education as he was an orphan. He started doing casual jobs within the community and learnt to operate power saw through apprenticeship from 2009 to 2011. He worked as a power saw operator up to the time he was arrested. He is married with two children aged ten years and four years. For the period he has been in prison, the Applicant has acquired skills in masonry but he has not sat for examinations. At the time of inquiry, the applicant had a problem with his right wrist thus he has taken a break from industry activities. The Applicant has completed a course on Healing Hearts Transforming Nations offered by Way of Peace.
6. The Applicant's two brothers attributed applicant's criminality to alcohol influence and said before the Applicant was sentenced, they had reconciled with the victim and compensated her with one cow and kshs 20,000. They supported community rehabilitation sentence and they are willing to facilitate his supervision at community level and ensure that he is fully integrated and settled within the community.
7. The Applicant's wife supports Applicant's review of sentence as he will assist her with parental responsibility. She added that before he was sentenced, she was due to deliver her second born child who is aged four years now but has not joined school due to low economic power. She is willing to facilitate his re-integration within the community.
8. The circumstances surrounding the offence is that the Applicant who is the victim's neighbor is said to have forced his way into the victim's house at night and coerced her into sex without her consent taking advantage of her disability. He was later arrested while hiding under the matrimonial bed of the victim and handed over to the police where he was arraigned in court.
9. The Applicant admits the charge and says he committed the offence under the influence of alcohol and that he had already reconciled and compensated her with a cow and kshs 20,000 but the sentencing court did not accept the idea. He prays to be allowed to serve non-custodial sentence of the remainder of the sentence so that he can restart his life afresh and continue with his parental roles.
10. The victim is currently aged 31 years old and a mother of four children. The victim is still bed ridden and paralyzed. She confirmed that the Applicant's family gave her husband Ksh. 20,000/= and a cow as a sign of compensation but she did not receive any compensation as her husband negotiated without her knowledge. She is still bitter over what the Applicant did to her and she is opposed to applicant's prayer for review of sentence as she has not received any apology from the Applicant.
11. The local administrations confirmed that the victim is still bitter over what the Applicant did to her. He confirmed that the victim's husband received a total of kshs 20,000 and a cow without her knowledge. He says the home environment of the Applicant is not suitable at the moment and he will lack someone who will facilitate his resettlement and reintegration within the community and supervision may be difficult since his close family members are scattered within the community and the Applicant's wife has not been around since he was sentenced.
12. On the 28th April, 2025, the Prosecution Counsel submitted that the social inquiry report is not favourable to the accused and they left the issue of review to the discretion of the court.

Analysis and Determination

13. The application herein invokes the revisional jurisdiction of this court which gives the court powers, in appropriate cases, to review and vary any orders, decision or sentence passed by the trial court if the court was satisfied that the impugned order, decision or sentence was illegal or was a product of an



error or impropriety on the part of the trial court. If the court was so satisfied, the law mandated it to make appropriate orders to correct the impugned order, decision or sentence and align it with the law. The above is the import of Section 362 as read with Section 364 of the *Criminal Procedure Code*.

14. The applicant herein has maintained that he is remorseful, reformed and rehabilitated since he has been in prison for some time now. He stated that while in prison, he has learnt skills that will help him earn a living if released. The Applicant has pleaded with this court to grant him a non-custodial sentence for the remainder of his prison term.
15. The objectives of sentencing are outlined in the 2023 *Judiciary of Kenya Sentencing Policy Guidelines* at page 15; paragraph 4.1 as follows:

Retribution: To punish the offender for his/her criminal conduct in a just manner.

Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.

Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.

Community protection: To protect the community by incapacitating the offender.

Denunciation: To communicate the community's condemnation of the criminal conduct.

16. Having considered the social inquiry report and specifically the sentiments of the victim who she is paralyzed and bed ridden says that she is still bitter over what the Applicant did to her and that although the family of the Applicant paid Kshs.20,000/= and a cow to compensate her, she did not receive anything as her husband negotiated with the family of the Accused secretly and received the money without giving her anything.
17. The local administration confirmed that the victim's husband received a total of Kshs. 20,000/= and a cow without the knowledge of the victim. They added that the home environment of the Applicant is not suitable at the moment as he will lack someone who will facilitate his resettlement and reintegration within the community thus it will be difficult to supervise him since his close family members are scattered within the community and the Applicant's wife has not been around since the applicant was sentenced.
18. From the above sentiments by the victim, the local administration and the recommendation by the probation officer, I find that the Applicant is not suitable for a non-custodial sentence.

Final orders: -

19. The application for review is hereby dismissed.

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

RACHEL NGETICH

JUDGE

In the presence of:



- Ms. Kosgei for State.
- Applicant present.
- Elvis/Momanyi – Court Assistants.

