



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Silas v Republic (Miscellaneous Criminal Application
E001 of 2025) [2025] KEHC 9315 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9315 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CRIMINAL APPLICATION E001 OF 2025**

**S MBUNGI, J
JUNE 30, 2025**

BETWEEN

VINCENT KHASENYA SILAS APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein was charged for the offence of defilement contrary to section 8(1) as read with section 8(4) of the [Sexual Offences Act](#) No 3 of 2006, convicted and sentenced to serve 15 years imprisonment.
2. The applicant prays for this court's leniency to review his sentence. The applicant also prays that the court takes into account the period he spent in custody during trial in accordance with the provisions of section 333(2) of the [CPC](#).
3. The applicant states that his mitigating circumstances inter alia relevant factors of consideration in sentence were not taken into account as part of the trial and requests for its consideration and substitution of the sentence.
4. The application is premised on the grounds that he has been rehabilitated, is of good character, he is a first-time offender and remorseful.
5. The applicant has also submitted that the sentence of 15 years substituted by the high court is a minimum mandatory sentence and prays to be awarded the benefit of a second chance in life by substituting the imposed sentence with a lesser judicial evaluated sentence.
6. He opines that he should benefit from a less severe sentence and relied in the case of [Yawa Nyale v Republic](#), [Regan Murithi v Republic](#), [James Waweru Mwangi v Republic](#) And [Jesee Gathiomi Mbutu v Republic](#) Cr App. No 77 of 2017.



Analysis and Determination.

7. The Jurisdiction of the high court to review is donated by article 165 (6) & (7) of the Constitution. The article provides: -

“(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”

8. The jurisdiction is supervisory and it extended to the High court to review the decisions and orders of the sub-ordinate court. It grants the High Court supervisory jurisdiction over sub-ordinate Courts.

9. The High Court exercises jurisdiction of revision over sub-ordinate Court on orders issued by the sub-ordinate Court. Section 362 of the Criminal Procedure Code provides as follows: -

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

10. The discretion in sentencing rests with the trial judge because he or she has the knowledge of the relevant facts before him or her and in many instances, has observed the accused and witnesses’ demeanor. The discretion must however be exercised judiciously. In the Nigerian case of *African Continents Bank v Nuamani* [1991] NWLI (part 86)486, it was observed that,

“The exercise of court’s discretion is said to be judicial if the judge invokes the power in his capacity as a judge qua law. An exercise of discretionary power will be said to be judicial, if the power is exercised in accordance with the enabling statutes, discretionary power is said to be judicious if it arises or conveys the intellectual wisdom or prudent intellectual capacity of the judge. The exercise must be based on a sound and sensible judgment with a view to doing justice to the parties.”

11. In *Benard Kimani v Republic* (2002) eKLR the Court of Appeal stated that:

“It is now settled law, following several authorities by this Court and 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...”

12. The Supreme Court in *Francis Karioko Muruatetu & another v Republic*, Petition No 15 of 2015, as a guide in sentencing held that:

“...the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:



- a. age of the offender
 - b. being a first offender;
 - c. whether the offender pleaded guilty;
 - d. character and record of the offender;
 - e. commission of the offence in response to gender-based violence;
 - f. remorsefulness of the offender;
 - g. the possibility of reform and social re-adaptation of the offender;
 - h. any other factor that the Court considers relevant.”
13. In *Dahir Hussein v Republic* Criminal Appeal No 1 of 2015; [2015] eKLR, the High Court held that the objectives of sentencing include: “deterrence, rehabilitation, accountability for one’s actions, society protection, retribution and denouncing the conduct by the offender on the harm done to the victim.”
14. The 2016 Judiciary of Kenya *Sentencing Policy Guidelines* lists the objectives of sentencing at page 15 paragraph 4.1 as follows:
- “Sentences are imposed to meet the following objectives:
1. Retribution: To punish the offender for his/her criminal conduct in a just manner.
 2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.
 4. 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.
 5. Community protection: To protect the community by incapacitating the offender.
 6. Denunciation: To communicate the community’s condemnation of the criminal conduct.”
15. I have looked at the application, the supporting affidavit, the submissions by both parties and the trial court record.
16. The applicant was charged with the offence of defilement contrary to section 8(1) as read with section 8(4) of the *Sexual Offences Act* No 3 of 2006. The section states:

“Defilement



- (1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.
- (4) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.”

17. The appellant was sentenced to 15 years’ jail term.

18. Sentencing is a discretion of the court. But the court should look at the facts and the circumstances of the case in it’s entirely so as to arrive at appropriate sentence. The Court of Appeal [Thomas Mwambu Wenyi v Republic](#) [2017] eKLR cited the decision of the Supreme Court of India in [Alister Anthony Pereira v State of Maharesbtra](#) at paragraph 70-71 where the court held the following on sentencing:

“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.

19. The applicant also raised the issue of the unconstitutionality of the minimum sentence. This aspect was recently clarified by the supreme court where it said that the mandatory sentences prescribed under the [Sexual Offences Act](#) No 3 of 2006 are lawful.

20. The Supreme Court Petition No E018 of 2023- [Republic v Joshua Gichuki Mwangi](#) also reiterated the position in the Muruatetu case regarding the unconstitutionality of Sexual Offences sentences and held thus:

“We therefore reiterate that, this court’s decision in Muruatetu, did not invalidate mandatory sentences or minimum sentences in the [Penal Code](#), the [Sexual Offences Act](#) or any other statute.” 14. It should be apparent from the foregoing that Muruatetu cannot be the authority for stating that all provisions of the law prescribing mandatory or minimum sentences are inconsistent SC Petition No E018 of 2023 27 with the [Constitution](#).”

21. The applicant has also prayed the court be pleased order that his sentence runs from the date of arrest as per the provisions of Section 333(2) of the [CPC](#).

22. Section 333(2) of the [Criminal Procedure Code](#) provides as follows:

“Subject to the provisions of Section 38 of the [Penal Code](#), every sentence shall be deemed to commence from and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code. Provided that where the person



sentenced under sub section (1) has prior, to such sentence shall take account of the period spent in custody.”

23. According to The Judiciary [Sentencing Policy Guidelines](#) 2023:

“Section 333 (2) of the [Criminal Procedure Code](#) obligates the court to take into account the time already served in custody. Failure to do so impacts the overall period of detention which may result in a punishment that is not proportionate to the seriousness of the offence committed. This also applies to those who are charged with offences that involve minimum sentences as well as where an accused person has spent time in custody because he or she could not meet the terms of bail or bond.

Upon determining the period of imprisonment to impose upon an offender, the court must then deduct the period spent in custody in identifying the actual period to be served (see GATS at Part V). This period must be carefully calculated – and courts should make an enquiry particularly with unrepresented offenders– for example, there may be periods served where bail was interrupted and a short remand in custody was followed by a reissuance of bail e.g., where a surety is withdrawn, and a new surety is later found. This calculation must include time spent in police custody.”

24. It is therefore clear that it is mandatory that the period which an accused has been held in custody prior to being sentenced be considered in meting out the sentence where it is not hindered by other provisions of the law.

25. I have perused the trial court proceedings and sentence. In the court’s pronouncement, the trial court magistrate did not address the time spent by the accused person in custody during trial.

26. According to the charge sheet, the applicant was arrested on 20/5/2021. The applicant remained in remand throughout the trial until the date of sentencing by the trial court on 30.06.2021.

27. The application therefore, partially succeeds to the extent that I do order that the sentence of fifteen (15) years imprisonment shall run from the date of arrest being 20.05.2021 pursuant to the provisions of Section 333(2) of the Criminal Procedure

28. Right of appeal 14 days explained.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 30TH DAY OF JUNE, 2025.

S.N. MBUNGI

JUDGE

In the presence of:-

Elizabeth, Court Assistant.

Ms Osoro for the ODPP present online.

Applicant present online.

