



REPUBLIC OF KENYA



KENYA LAW
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**Kipkoech v Republic (Criminal Revision E339 of 2024)
[2025] KEHC 12486 (KLR) (8 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12486 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E339 OF 2024
RN NYAKUNDI, J
SEPTEMBER 8, 2025**

BETWEEN

DANIEL KIPKOECH APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. What is pending before this court for determination is a Notice of Motion Application dated 10th July 2024 in which the Applicant is seeking the following orders:
 - a. Spent.
 - b. That, this court be pleased to review the sentence of 35 years in Criminal Case No.1807 of 2012 on application for Re-sentencing basis.
 - c. That may this court be pleased to hear and determine this instant application for priority basis.
 - d. Any other order that this Hon. Court may deem just and fit.
2. The application is made on the following grounds;
 - a. That the applicant was charged, convicted and sentence to thirty-five (35) years imprisonment for the offence of Defilement contrary to section 8(1) as read with section 8(2) of the [Sexual Offences Act](#) No.3 of 2006.
 - b. That the applicant appealed to the high court of Kenya Vide Criminal Appeal No.13 of 2013 but later withdrew the appeal.
 - c. That the sentence of thirty-five (35) years is very excessive to the applicant since he is a man who wishes to shape up his future dream.



- d. That he is prejudiced by being deprived the right to mitigate and the right to lesser severe sentence (unlike other offender) which amounts to discrimination contrary to Article 27 of the Constitution.
 - e. That sentence is a legal issue which form part of principle of a fair trial and legal sound in law.
 - f. That the applicant right to mitigate under section 216 and 329 of the Criminal Procedure Code was rendered in effective during sentencing.
 - g. That the applicant urges this Hon. court to exercise this power and so impose a lesser sentence.
 - h. That sentence review is a constituent of fair trial which incarceration, it will be both inhuman and unjust treatment if the same was denied.
 - i. That the applicant has undergone various reformation, programs and achieved certificate in prisoner journey
 - j. That may Section 333(2) of the CPC be invoked and therefore take into account the period which the Applicant spent in custody while still on trial.
3. The Application is supported by the annexed affidavit sworn by the Applicant herein which echoes the grounds in support of the application.

Decision

4. The applicant was tried found guilty, convicted and sentenced for the offence of defilement contrary to Section 8(1) as read with 8(2) of the Sexual Offence Act No. 3 of 2006. In the legislative scheme of the Act, committing an act of defilement against a child aged below 11 years the nature of the sentence is that of life imprisonment. According to the Judicial process, where the offender who has committed an offence of such gravity he forfeits his gravity to the state for the rest of his days if necessary unless there are compelling and substantial for the sentence to be reviewed.
5. The law is settled on the guiding principles to be invoked by an Appeal Court in reviewing the sentence as agitated by the applicant. The court in S vs Malgas 2001(1) SACR 469 (SCA) at para 12 it was held that;

“A Court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial court...However, even in the absence of material misdirection, an appellate court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which the appellate court would have imposed had it been the trial court is so marked that it can properly be described as “shocking”, “startling” or “disturbingly inappropriate”

6. The Court of Appeal, on its part, in Bernard Kimani Gacheru vs. 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."

7. The applicant has moved this court in terms of Article 50 (2) (p)(q) of the *Constitution* and Section 362 of the Criminal Procedure Code which means that he is asking the court to make a finding that the sentence is irregular, illegal, incorrect, punitive, harsh and excessive. The applicant in this matter was charged, tried found guilty convicted and sentenced to thirty-five years' imprisonment. According to the provisions of Section 8 (1) as read with Section 8 (2) of the *Sexual Offence Act*, the prescribed sentence is that of life imprisonment. In the affidavit shared with the court, there are no substantial and compelling circumstances just by this revision. Further the applicant should be cautioned that the deviation by the trial learned magistrate with the prescribed sentence of life was not imposed in accordance of the same provision.
8. It is trite in our jurisdiction that a trial court does not have untrammelled discretion to determine a sentence, nor does it operate on a clean slate from which to cherry-pick various scales of punishment to be imposed on individual convicted offenders. This application is therefore dismissed for want of merit.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 8TH DAY OF SEPTEMBER 2025

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R. NYAKUNDI

JUDGE

Representation

M/S Sidi for the State

