



**Wekesa v Republic (Miscellaneous Criminal Application  
E025 of 2023) [2024] KEHC 464 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 464 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
MISCELLANEOUS CRIMINAL APPLICATION E025 OF 2023**

**RB NGETICH, J  
JANUARY 25, 2024**

**BETWEEN**

**ALEX WEKESA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant Alex WekesA 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 *vide* Kabarnet Magistrate’s court’s S/ O no. 036 of 2021 and upon hearing and determination of the matter he was sentenced to 10 years imprisonment.
2. The Applicant has now petitioned this court *vide* an undated application seeking sentence review under Article 50(2)(p)(q), Article 27, Article 22, 23 ,24, 25, 28, 29, 50,51, 159 and 163 of the Constitution of Kenya,2010, Section 362, 364 of the CPC he is seeking for sentence review.
3. In the application, he avers that he is a first offender, remorseful, repentant and has reformed as he has learned to take responsibility of his own actions. He prays for review of his sentence. He stated that he was sentenced to serve 10 years imprisonment for the offence of defilement and that the complainant was 17 years while he was 22 years old at the time of the offence. He stated that he has been in prison for 2 years 7 months and urged this court to reduce the sentence. He further stated that he was in remand for 9 months which period was reduced from his sentence.
4. In response, the state counsel Ms. Ratemo submitted that the Applicant was sentenced to 10 years imprisonment for the offence of defilement and that it is not indicated how old the minor was at the time of conviction. Further that the Applicant has indicated that the minor was 17 years old at the time of the offence and for defilement of a child between 16 and 18 the accused is liable to imprisonment for a term not less than 15 years but in this case the applicant was convicted to serve 10 years imprisonment



which is lower than the minimum. She submitted that the sentence was quite lenient and urged this court to dismiss this application.

### **Analysis And Determination**

5. I have considered grounds raised by the applicant and response by the state and wish to consider whether the application meets threshold for revision of sentence.
6. In the case of *Shadrack Kipkoech Kogo - vs - Republic* Eldoret Criminal Appeal No.253 of 2003 the Court of Appeal stated as follows:-

“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 – vs- R. (1989 KLR 306).”

7. 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.”

8. The applicant herein informs the court that he is seeking review of the sentence. I note that the applicant is not disputing that the complainant was 17 years old at the time of the offence. The penalty Section 8(4) of the Act which provides:

“A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years.”

9. The applicant herein was sentenced to 10 years imprisonment a period which is lower than the minimum sentence provided by statute. I take note of the fact that the applicant was a young man aged 22 years. The complainant was 17 years old, an age close to majority age. That was not however an excuse for the applicant to take advantage of her. The intention of the *sexual offences Act* was to protect minors against abuse by adults who owe them a duty of protection
10. In view of the above, sentence imposed is appropriate in the circumstance. No sufficient reasons have been advanced to warrant review of sentence.

### **11. Final Orders:**

This Application is hereby dismissed.

**RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 25<sup>TH</sup> DAY OF JANUARY 2024.**



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**RACHEL NGETICH**

**JUDGE**

In the presence of

Elvis.....Court Assistant.

Ms.Ratemo.....Counsel for state.

Applicant present.

