



**Cheptum v Republic (Revision Case E027 of 2024)
[2024] KEHC 5983 (KLR) (27 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5983 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
REVISION CASE E027 OF 2024
RB NGETICH, J
MAY 27, 2024**

BETWEEN

MOSES MUSA CHEPTUM APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the Sexual Offences Act. The particulars of the offence were that on the 17th day of September, 2016 at around 9:00 a.m. at (Particulars withheld) village in (Particulars withheld) Sub-county the accused unlawfully and intentionally caused his penis to penetrate the vagina of C.J a girl aged 17 years. Upon hearing and determination of the suit, the applicant was convicted and sentenced to 15 years imprisonment.
2. The Applicant being dissatisfied with the conviction and sentence imposed by the trial court filed an appeal being Kabarnet High Court Criminal Appeal No. 51 of 2018 which was heard and determined on the 27th day of November, 2019 wherein the court found no merit in the appeal both on conviction and sentence and the same was dismissed accordingly.

Application For Review Of Sentence

3. The Applicant has now approached this court through an application brought under the provisions of Section 4 Cap 63 of the Penal Code seeking a non-custodial sentence as he has been in prison from 2016 to date and has reformed entirely. He states that he is now a saved soul holding a baptismal certificate and in addition has been leading his fellow inmates in Godly ways and urges this court to give him another chance in life. The Applicant further states that he has learnt carpentry and joinery while in prison and he has all the certificates and will therefore be self-reliant once out of prison.



4. The applicant states that he left his family 8 years ago and his wife has been solely providing for the children but she is now overwhelmed with the family responsibility as they have children in high school and his wife being a peasant farmer cannot afford to provide for the children's basic needs and their school fees hence he will come in handy to help her if released. He further states that he is a first offender and has reformed all round and repented and urged this court to allow the application.
5. When the matter came up before court on the 9th April, 2024, the applicant informed the court that he is seeking a non-custodial sentence and that he has been sentenced to 15 years imprisonment and has been in prison for 8 years and is now remaining with 2 years and 8 months.
6. The court called for a social inquiry report which was filed on the 25th April, 2024. From the report, the applicant had a formal education up to standard six at Terment primary where he dropped out of school due to his own personal will and financial constraints within the family after which he became a herder within the community and complemented with casual jobs and in the year 2011, he started operating a powers saw within the community. The inmate is single with no dependants, he is of good health and he use to consume alcohol. He has been in custody for a period of 7 years and four months and during this period, he has managed to acquire skills in carpentry and joinery.
7. The Applicant states that for the seven years and four months he has been in custody, he has learnt a lot and at the moment, he is a reformed man and he understands currently what is good and bad. He prays for non-custodial sentence or the custodial sentence be reduced and he is willing to abide by the conditions the court will grant him.
8. The applicant's sister and cousin are willing to facilitate his rehabilitation within the community. The cousin promised to stay with the applicant since after the demise of his parents the house is not in good state. The cousin stated that the applicant requested him to go to the victim's family and seek forgiveness on his behalf and the victim's family accepted his request for forgiveness and they have fully reconciled.
9. The victim's father stated that the victim is currently doing well and of good health. He confirmed that the applicant's cousin sought forgiveness on his behalf and they family have accepted and are not opposed to the applicant being given community rehabilitation.
10. The local administration indicated that the victim and the inmate are neighbor's and after the sentencing of the inmate they continued to live in harmony. He is not opposed to the applicant's sentence being reduced or admitted into community rehabilitation. He is willing to facilitate his reintegration within the community and supervision.

Analysis And Determination

11. The applicant herein urges this court to exercise supervisory powers under Article 165(6) of the [Constitution](#) and revise his sentence to allow him serve noncustodial sentence for the remaining period of sentence. The applicant was sentenced to 15 years imprisonment for the offence of defilement. He has served 8 years in prison and at the time of filing this application, he was remaining with 2 years 8 months.
12. I have considered sentiments by the victim's family, local administration and applicant's family. I also take note of the fact that the applicant has served for a period of 8 years in prison and has learnt joinery and carpentry. I take note of the fact that the local administration and victim's family are not opposed to applicant being released to serve non-custodial sentence for the remaining period of sentence. The applicant also stated that he is remorseful, and the victim's family confirmed that he sent his cousin



to seek forgiveness from the victim's family and they have forgiven him. In view of the above I find it appropriate to revise the applicant's sentence.

13. Final Orders:

1. Application for review is allowed
2. Applicant to serve probation sentence for the remaining period of sentence imposed by the trial court.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 27TH DAY OF MAY 2024.

RACHEL NGETICH

JUDGE

In the presence of:

Elvis/Momanyi – Court Assistant.

Applicant present.

Ms. Ratemo for state

