



REPUBLIC OF KENYA



KENYA LAW
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**Ahmed v Republic (Criminal Revision E129 of 2024)
[2025] KEHC 3459 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3459 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL REVISION E129 OF 2024
JN ONYIEGO, J
MARCH 20, 2025**

BETWEEN

MASLAH AHMED APPLICANT

AND

REPUBLIC RESPONDENT

*(Being revision against the sentence of Hon. Nyaga Mugendi delivered
on 12-3-2021 in criminal case number E005 of 2021 in Wajir PM's case)*

RULING

1. The applicant was charged in Criminal Case No. E005 of 2021 in the PM's Court at Wajir Law Courts with the offence of defilement contrary to section 8(1) as read with section 8(2) of the [Sexual Offences Act](#) No. 3 of 2006. The particulars of the offence read as follows: on 15.02.2021 at Habaswein Township, Sub county within Wajir County, he intentionally caused his penis to penetrate the anus of AII, a child aged 10 years.
2. He was tried and convicted of the offence and sentenced to serve life imprisonment.
3. Being dissatisfied with the determination of the court, he appealed against both conviction and sentence before the High Court vide Criminal Appeal Case No. E018 of 2021 where the court substituted the life imprisonment sentence with a 25-year sentence to run from the time when the trial court imposed its sentence.
4. He has filed the current application dated 30.11.2024 seeking under section 333(2) of the [CPC](#) to put into consideration the time he spent in custody during trial. That he was arrested on 25.02.2021 and that he stayed in prison from the year 2017 to 2019. However, a perusal of the record shows that he was arrested on 25.02.2021 and consequently tried, convicted and sentenced on 12.03.2021.



5. At the hearing of the application, the applicant urged this court to consider the time he spent in custody in recognition of section 333(2) of the CPC and subtract the same from his sentence. The learned prosecutor on the other hand was not opposed to the said application.
6. I have considered the application and the oral submissions by the parties herein. The main issue is whether this Honourable Court has jurisdiction to determine the application herein and to issue the orders sought.
7. It is not in dispute that having been charged with the offence of defilement, the applicant appealed against both conviction and sentence before the High Court vide Criminal Appeal Case No. E018 of 2021 where the court substituted the life imprisonment sentence with a 25-year sentence to run from the time when the trial court imposed its sentence.
8. My humble view is that once a judge or a judicial officer has pronounced a sentence, he/she becomes *functus officio*. It then follows that if the sentence is illegal or inappropriate the only court which can address the same is an appellate court. To the extent that this court substituted the sentence of the applicant from life imprisonment to 25 years imprisonment, it became *functus officio* and therefore, it cannot proceed further to tamper with its pronouncement. Accordingly, the applicant's reprieve lies elsewhere and not before this court.
9. In my view, this court at this stage is *functus officio* and as a consequence, the application herein is dismissed for being unmeritorious.

DATED, SIGNED AND DELIVERED THIS 20TH DAY OF MARCH 2025

J. N. ONYIEGO

JUDGE

