



**Macharia v Republic & another (Criminal Revision E042 of 2025)  
[2025] KEHC 2534 (KLR) (Crim) (10 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2534 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL REVISION E042 OF 2025  
K KIMONDO, J  
MARCH 10, 2025**

**BETWEEN**

**THE CHILDREN'S COURT AT NAIROBI (HON ALICE MACHARIA,  
PM) ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**AND**

**JAN INT VELD ALIAS TEACHER JAN, ALIAS DAD ALIAS  
MZUNGU ..... ACCUSED**

*(Revision from the sentence in Children's Court at Nairobi Criminal Case No. S. O.  
E037 of 2023 before A. W. Macharia, Principal Magistrate, on 4th March 2025)*

**RULING**

1. This revision was requested by the learned trial magistrate, A. W. Macharia, Principal Magistrate, on 10<sup>th</sup> March 2025. The original lower court file was forwarded to the High Court on the same date.
2. On 31<sup>st</sup> January 2025, the accused was convicted on 10 counts of committing an indecent act with a child contrary to section 11 (1) of the *Sexual Offences Act*, sexual communication with a child contrary to section 16A (1)(ii), child pornography contrary to section 16 (1)(g) and child abuse contrary to section 22 (1)(b) of the said *Act*.
3. The revision sought by the learned trial magistrate relates only to the sentences delivered on 4<sup>th</sup> March 2025. The error pointed out is that whereas the court sentenced the accused in Counts 2, 4, 5, 6, 7 and 8 to pay a fine of Kshs 500,000 on each of the counts, it failed to pronounce the default sentences.



4. Being a revision, and by dint of section 365 of the *Criminal Procedure Code*, no party has a right to be heard either personally or by an advocate before the High Court when exercising its powers of revision.
5. Article 165 (6) of the *Constitution* confers the High Court with supervisory jurisdiction over all subordinate courts. Furthermore, and, by dint of sections 362 to 364 of the *Criminal Procedure Code*, the High Court is imbued with wide powers to review the orders of the learned trial magistrate.
6. The penal provisions relating to the offences in Counts 2, 4, 5, 6, 7 and 8 above provide for a fine or imprisonment or both such fine and imprisonment. In this case the learned trial magistrate fined the accused on each of those counts as abovementioned and that matter is obviously closed. The apparent error is failing to provide for a default sentence.
7. In view of the orders that I propose to make, I will not comment any further about the appropriate default sentences. In a matter of this nature, it is open to the High Court to sentence the accused. But it would prejudice him because he is still entitled to a full appeal to the High Court on both the conviction and final sentences.
8. To enable him be heard before any further default sentence, I allow the revision only to the extent that the trial court may now pronounce itself on the default sentence. However, the accused, the Republic and any victim must be heard at such further sentence hearing before the trial court delivers any such default sentence.
9. The lower court file shall now be remitted back to the trial court together with a certified copy of this ruling. The Deputy Registrar shall also notify the accused, his counsel and the Director of Public Prosecutions of this order.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 10<sup>TH</sup> DAY OF MARCH 2025.**

**KANYI KIMONDO**

**JUDGE**

Ruling read in chambers in the presence of-

Mr. E. Ombuna, Court Assistant.

