



**AKM v Republic (Miscellaneous Criminal Application E128 of 2024)  
[2025] KEHC 15609 (KLR) (29 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15609 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS CRIMINAL APPLICATION E128 OF 2024  
HI ONG'UDI, J  
OCTOBER 29, 2025**

**BETWEEN**

**AKM ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. This is the undated Notice of Motion filed on 15<sup>th</sup> July, 2024 by the applicant – (AKM). He seeks to have the period of one (1) year plus six (6) months spent in remand custody before conviction and sentence considered as provided for under section 333(2) of the Criminal Procedure Code.
2. In response the respondent through Mr. Kihara prosecution counsel opposed the application saying the High Court had already dealt with the applicant's appeal hence this court was functus officio.
3. Before me are both:
  - i. Nakuru Children's Court Criminal No. 250/2015 – AKM
  - ii. Nakuru High Court Criminal Appeal No. 53 of 2017 – AKM V Republic
4. The applicant was charged and convicted of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act* No. 3 of 206 and sentenced to thirty (30) years imprisonment.
5. On appeal the conviction was found to be under section 8(1) as read with section 8(3) of the *Sexual Offences Act* No. 3 of 2006, and not section 8(1) as read with section 8(2) as found by the trial court. The sentence was thus reviewed downwards from 30 years to 20 years imprisonment.
6. From the application it is clear that the applicant is not contesting the award of the sentence. All he is saying is that both the trial court and the High Court did not consider the period he had been in remand custody.



7. It is an issue that was raised when the appeal was filed and heard in the High Court. It's an issue the H High Court would have picked and addressed suo moto but it did not for reasons only that court can respond to.
8. Dealing as the applicant herein wants this court to do would amount to supervising a court of equal status. I decline to do that. Let the applicant move to the Court of Appeal for his issue to be addressed.
9. I find no merit in this application which I hereby dismiss.
10. Orders accordingly

**DELIVERED, DATED AND SIGNED THIS 29<sup>TH</sup> DAY OF OCTOBER, 2025 IN OPEN COURT  
AT NAKURU**

**H. I. ONG'UDI**

**JUDGE**

