



REPUBLIC OF KENYA



**KENYA LAW**  
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**Isiayo v Republic (Criminal Revision 22 of 2025)  
[2025] KEHC 16613 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16613 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDAMA RAVINE  
CRIMINAL REVISION 22 OF 2025  
RB NGETICH, J  
NOVEMBER 13, 2025**

**BETWEEN**

**JOHN WAMBAYA ISIAYO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant, John Wambaya Isiayo was charged with the offence of defilement contrary to section 8(1) as read with section 8(4) of the penal code. Particulars are that between 1<sup>st</sup> and 10<sup>th</sup> of May 2018 at Makutano village in Koibatek subcounty the accused willfully and unlawfully committed an act which caused penetration of his penis into the vagina of Bereta Shanamoyo a child aged 17 years. The applicant pleaded guilty to the charge and upon conviction, the applicant was sentenced to 15 years imprisonment.
2. He now seeks review of sentence vide application dated 15<sup>th</sup> July 2025. I called for social inquiry report.

**Social Inquiry Report**

3. From the report, the accused's and the victim's family were friends. The applicant became close to the victim following family visits and took advantage of her when she was left alone at home and defiled her. He regrets committing the offence and prays to be allowed to serve the remaining period while in non-custodial sentence. He says his family has suffered while he is in prison and wished to be given an opportunity to take care of his children.
4. The victim was not available for interview. The probation officer learnt from her parents that she went to Qatar for work in February 2025 and she could not be reached on phone. The victim's parents indicated that the victim gave birth to a baby boy out of defilement and later got another child. They said the victim proceeded with school after defilement and sat for KCSE. They are not opposed to revision



of sentence but say if released, he should take up parental responsibility over the child born out of defilement.

5. The applicant's family are willing to support him upon release and that the applicant should take up parental responsibility of the child born out of defilement and compensate the victim's family who have been taking care of the child.
6. The local administration stated that the applicant had no previous convictions and is not security threat. He stated that the applicant related well with the community and is a peaceful person.
7. The probation officer further found that the applicant was married with 2 children but his wife has since left with one child and remarried and has another child with her current husband. The applicant's child left behind is living with applicant's mother.
8. Nakuru prison in charge gave positive report about the applicant and are not opposed to non-custodial sentence. At the time of social inquiry report on 9<sup>th</sup> October 2025, the applicant was remaining with 3 years 1 month to complete sentence.

### **Analysis And Determination**

9. I have considered the application for revision, the record of the trial court, the mitigation tendered, and the social inquiry report filed by the Probation and Aftercare Service. I have also considered the nature of the offence, the applicant's personal circumstances, and the objectives of sentencing.
10. The jurisdiction of this Court to revise criminal proceedings is derived from sections 362 and 364 of the Criminal Procedure Code. Under section 362, the High Court may call for and examine the record of any criminal proceedings before a subordinate court for the purpose of satisfying itself as to the correctness, legality, or propriety of any finding, sentence, or order recorded or passed, and as to the regularity of the proceedings. Section 364 further empowers the Court, upon examining such record, to alter or reverse any order or sentence where an illegality, impropriety, or irregularity is found.
11. It is settled law that revisionary powers are supervisory in nature and are not to be invoked as a substitute for an appeal. The Court will not interfere merely because it might have exercised its discretion differently, but only where the impugned sentence is illegal, manifestly excessive, or founded on a misdirection of law or fact.
12. The applicant was convicted on his own plea of guilty for the offence of defilement contrary to section 8(1) as read with section 8(4) of the *akn/ke/act/2006/3 Sexual Offences Act*, which attracts a minimum sentence of fifteen (15) years imprisonment. The trial court imposed the statutory minimum, and there is no suggestion that the sentence exceeded the lawful limits or that the court misapprehended the applicable law.
13. The social inquiry report presents the applicant as a first offender who has expressed remorse. The victim's parents have since reconciled with him to the extent of not opposing revision, provided he assumes parental responsibility for the child born out of the defilement. The prison authorities and local administration also recommended a non-custodial sentence.
14. However, this Court cannot lose sight of the seriousness of the offence. The applicant was a married man and a family friend to the victim's family. He took advantage of that relationship and of the victim's innocence and vulnerability, leading to her defilement and pregnancy. The victim was only seventeen (17) years old and certainly suffered emotional and psychological trauma from the experience. The applicant's conduct constituted a grave betrayal of trust, and such offences undermine the moral and social fabric of the community.



15. The object of sentencing in such cases is not only to rehabilitate the offender but also to deter similar offences, protect children from sexual abuse, and affirm society's condemnation of sexual exploitation of minors. The Court of Appeal in *Jared Koita Injiri v Republic* [2019] eKLR held that while mandatory minimum sentences under the *Sexual Offences Act* may be subject to judicial discretion, the discretion must be exercised judiciously and only in exceptional circumstances warranting a lesser sentence.
16. In this case, I find no exceptional or compelling reason to warrant interference with the lawful sentence imposed by the trial court. The applicant was treated with leniency through the minimum term of fifteen (15) years imprisonment. The sentence is neither illegal nor excessive, and it serves the objectives of punishment, deterrence, and protection of the child victim.
17. The favorable social inquiry report and family support are factors that may be considered by the relevant authorities under the *Power of Mercy Act* or in a future application for parole or remission. They do not, however, constitute grounds for judicial revision under section 364 of the Criminal Procedure Code.
18. From the foregoing, I find no illegality, impropriety, or irregularity in the sentence imposed by the trial court to justify revision. The application dated 15th July 2025 is therefore dismissed. The sentence of fifteen (15) years imprisonment shall stand.

PARA 19.

**Final Orders:-**

20. Application for revision of sentence is hereby declined

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 13<sup>TH</sup> OF NOVEMBER 2025.**

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of :

CA Karanja.

Ms. Omari for state.

Applicant.

