



REPUBLIC OF KENYA



**Ndere v Republic (Miscellaneous Criminal Application E163 of 2025)
[2025] KEHC 17352 (KLR) (26 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17352 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION E163 OF 2025**

**A MABEYA, J
NOVEMBER 26, 2025**

BETWEEN

JOEL AGANDA NDERE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Joel Aganda Ndere ('the applicant') was charged with the offence of defilement contrary to section 8(1) and 8(3) of the *Sexual Offences Act*. It was alleged that on 30/7/2014 at mid-night he defiled F.A.A, a child of 16 years.
 2. He was tried and found guilty. He was convicted of the offence and was sentenced to 20 years' imprisonment. The applicant appealed to this Court against both the conviction and sentence. By a Judgment made on 26/10/2021, Kamau J dismissed the appeal in its entirety.
 3. By an undated Motion on Notice lodged in Court on 1/10/2025, the applicant sought that the period spent in custody during the trial be taken into consideration in the calculation of his sentence.
 4. It is clear that section 333(2) of the Criminal Procedure Code requires that the trial court does take into consideration the period an accused has spent in custody when meting out its sentence. That is the preserve of the trial court.
 5. In the present case, the sentence was appealed against and this Court, (Kamau J) confirmed the same. Once the Court confirmed the sentence the Court was bereft of any jurisdiction to deal with his case any further. It is the Court of Appeal only which can now interfere with the sentence.
 6. Accordingly, the undated application is found to be without merit and is hereby dismissed.
- It is so ordered.



DATED AND DELIVERED AT KISUMU THIS 26TH DAY OF NOVEMBER, 2025.

A. MABEYA, FCI Arb

JUDGE

