



**Gulu v Republic (Miscellaneous Criminal Application  
E051 of 2025) [2026] KEHC 126 (KLR) (15 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 126 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
MISCELLANEOUS CRIMINAL APPLICATION E051 OF 2025**

**JN ONYIEGO, J  
JANUARY 15, 2026**

**BETWEEN**

**OSMAN HARUN GULU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being a revision application against the sentence of Hon. J. Omwange (S.R.M.) delivered on 12th June 2023 in sexual offences case No. 39 of 2020 in CM's Court Garissa)*

**RULING**

1. The appellant herein was charged in Garissa Chief Magistrate's Court Sexual Offence Case No. 39 of 2020 with the offence of defilement contrary to section 8(4) of the [Sexual Offences Act](#) No 3 of 2006.
2. The particulars of the offence were that on diverse dates and time between 31.07.2020 and 16.08.2020 at [Particulars withheld] village in Garissa Sub County within Garissa County, he intentionally and unlawfully caused his genital organ namely penis to penetrate the genital organ namely vagina of YAC, a child aged 16 years.
3. He also faced an alternative count of committing an indecent act with a child contrary to section 11(1) of the [Sexual Offences Act](#) in respect of which he was discharged.
4. The appellant denied the charges and upon full hearing, the trial court convicted him of the main count and sentenced him to serve (15) years' imprisonment. Aggrieved by both the conviction and sentence, he preferred criminal appeal No. E034 of 2023 Garissa High court.
5. Vide its judgment delivered on 26-04-2024, the court dismissed the appeal on conviction but substituted the sentence of 15 years with 5 years. Dissatisfied, he moved the court vide an undated application seeking to be placed on community service order. The application was however dismissed on 30-04-2025.



6. Undeterred, he has now moved this court vide a notice of motion dated 21-11-2025 seeking review of sentence under Section 333(2) of the CPC.
7. During the hearing, the applicant basically reiterated the content of his application thereby emphasizing that the trial court did not consider the period spent in remand custody. Prosecution merely left it to the court to make its decision.
8. I have considered the application herein and the response thereof. The law governing revision in a criminal case is captured under Section 362 and 364 of the CPC. Section 362 and 364 provides as follows;

“362. Power of High Court to call for records

The High Court may call for and examine the record of any criminal proceedings before any 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 any proceedings of any such subordinate court.

364. Powers of High Court on revision

- (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may —
  - (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
  - (b) in the case of any other order other than an order of acquittal, alter or reverse the order.
  - (c) in proceedings under section 203 or 296(2) of the Panel Code (Cap. 63), the *Prevention of Terrorism Act* (Cap. 59B), the *Narcotic Drugs and Psychotropic Substances (Control) Act* (Cap. 245), the Prevention of Organized Crimes Act (Cap. 59), the *Proceeds of Crime and Anti-Money Laundering Act* (Cap. 59A), the *Sexual Offences Act* (Cap. 63A) and the *Counter-Trafficking in Persons Act* (Cap. 61), where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.



- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

- (3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.
- (4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
- (5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.

9. It is clear from the above provisions that an application for review of sentence can be entertained only for purposes of the court satisfying itself as to the correctness, legality or propriety of the proceedings. Section 364(5) of the CPC is emphatic that no application for revision should be entertained where an appeal lies from a sentence or order. This position was espoused in Criminal Revision number 194 of 2023 Kisii High court in the case of Barongo Sianyio Atembe vs Republic.
10. In the instant application the court is being asked to review sentence under section 333(2) of the CPC which provides that when imposing sentence, a trial court should take into consideration the period spent in remand custody. A perusal of the record clearly show that the trial court did not consider the period spent in remand custody. However, in its appeal, the high court did reduce the period of his sentence from 15 years to 5 years thus covering the period spent in remand custody.
11. To revisit the sentence again would amount to sitting on my own appeal. In my view, the court is functus officio. Accordingly, the application is dismissed.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 15<sup>TH</sup> DAY OF JANUARY 2026**

.....  
**J.N.ONYIEGO**  
**JUDGE**

