

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MALINDI**  
**CRIMINAL REVISION NO. E067 OF 2025**

**JOHN IBRAHIM GANDI .....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

1. The Applicant was convicted of the offence of defilement, contrary to Section 8(1) as read with Section 8(4) of the Sexual Offences Act, in Kilifi Sexual Offences Case No. E019 of 2021. He was sentenced to 10 years imprisonment.
2. In his Application, the Applicant seeks that his sentence be reviewed to a noncustodial sentence or fine. He also prayed that the period spent in custody be included as part of his sentence.
3. The Respondent opted not to file a response.
4. The Constitution has conferred upon this Court supervisory jurisdiction over subordinate courts. Article 165(6) and (7) provides as follows:
  - (6) *The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.*
  - (7) *For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice*
5. In exercise of its supervisory jurisdiction, this Court is empowered to call for the record of proceedings in such subordinate courts, and make and give appropriate orders and directions as it deems necessary to ensure the fair administration of justice.
6. To give effect to this provision with regard to criminal matters, the Criminal Procedure Code elaborates the purpose of calling for the record of proceedings in subordinate courts by this Court, which is to satisfy itself as to the correctness, legality or propriety of any finding or order. Section 362 of the Criminal Procedure Code (CPC) provides:

***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.***

7. Where the Court finds after examining the record of proceedings before a subordinate court that the same are wanting in correctness or that there is illegality or impropriety of a finding, order or sentence, the Court may by dint of the revision powers conferred upon it by Section 364 of the CPC, enhance the sentence or alter or reverse the order except that of an acquittal. Section 364(5) of the CPC is explicit that 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 instance of the party who could have appealed.
8. I have called for and perused the record of the trial court. The Applicant has not demonstrated that the sentence imposed upon him is illegal. In the premises the orders sought cannot be granted by this Court sitting as a revision court.
9. Section 347 of the Criminal Procedure Code provides that a person convicted on a trial held by a subordinate court may appeal to the High Court. Our courts have repeatedly stated in many cases, that where a clear procedure for redress is prescribed by the Constitution or a statute, that procedure should be strictly followed. One such case is **Speaker of the National Assembly v James Njenga Karume [1992] eKLR** where the Court of Appeal stated:

***In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.***
10. Flowing from the above stated provisions of the law and the authority cited, the Applicant's redress lies in filing an appeal. It is in the exercise of its appellate jurisdiction that this Court can examine the record and look at the sentence complained about and make a decision thereon. The prayer for a non custodial sentence or fine is therefore rejected.
11. I now turn to the Applicant's prayer that the period he spent in remand pending trial be taken into account.
12. Section 333(2) of the CPC provides as follows:

***Subject to the provisions of section 38 of the Penal Code (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.***

***Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.***

13. The *proviso* to Section 333(2) of the CPC requires the court while sentencing, to take into account the period an accused person has spent in custody pending trial.
14. The record shows that the Applicant was arrested on 18.2.21. He was released on bond on 26.2.21. He later absconded resulting in the cancellation of his bond on 8.11.22. The Applicant remained in custody until 21.12.22 when he was sentenced.
15. In light of the foregoing, the Court finds that the Application partially succeeds. The period from 18.2.21 to 26.2.21 and the period from 8.11.22 to 21.12.22 shall be deducted from the sentence imposed upon the Applicant.

**DATED SIGNED and DELIVERED in MALINDI this 23<sup>rd</sup> day of January 2026**

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**M. THANDE**  
**JUDGE**