



**JOO v Republic (Miscellaneous Criminal Application  
E186 of 2025) [2026] KEHC 2923 (KLR) (6 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 2923 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
MISCELLANEOUS CRIMINAL APPLICATION E186 OF 2025**

**A MABEYA, J**

**MARCH 6, 2026**

**BETWEEN**

**JOO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. On 1/4/2015, JOO ('the applicant') was charged with the offence of defilement contrary to section 8(1) (2) of the *Sexual Offences Act* No. 3 of 2006.
2. It was alleged that on 28/3/2015 at Kenyango Estate, in Muhoroni Town within Kisumu County, he intentionally caused his penis to penetrate the vagina of S.A a child aged 9 years.
3. The second count was deliberate transmission of HIV contrary to section 26(1) (a) of the *Sexual Offences Act*. It was alleged that on the said date of 28/3/2015 at the same place, knowing that he was infected with HIV, a life threatening condition, he had unprotected sex with the aforesaid minor exposing her to the said infection.
4. The applicant was tried before the Tamu Senior Resident Magistrate's Court, and was found guilty. He was convicted of both counts and sentenced to 100 years and 30 years, respectively.
5. He appealed to this Court. By a judgment dated 18/12/2019, the Court (Cherere J) reduced the sentences to 15 years on each count. The same were to run concurrently.
6. By a Motion on Notice dated 17/4/2025, the applicant has sought that the said sentences of 15 years do commence from the date of his arrest. That this is by virtue of section 333(2) of the Criminal Procedure Code. The State, through Ms. Kagali, opposed the application on the grounds that this Court's Judgment of 18/12/2019 had taken that provision into consideration.



7. I have considered the record. I have also seen the Judgment dated 18/12/2019 in Ksm HCCRA No. 41 of 2019. JOO vs Republic. In its penultimate paragraph, the Court stated: -

“From the foregoing, the appeal fails except on the issue of sentence. Considering appellant’s health status, the 100 years and 30 years’ imprisonment sentence imposed on him are set aside and substituted with sentences of 15 years in each count which shall run concurrently from 10<sup>th</sup> August, 2015 when he was sentenced.”

8. From the foregoing, it is clear that section 333(2) of the Criminal Procedure Code was not adhered to. Be that as it may, that Judgment being by a Court of concurrent jurisdiction, this Court cannot interfere with its exercise of discretion. The only avenue open to the applicant is to appeal against that decision to the Court of Appeal which has the jurisdiction to overturn wrongful exercise of discretion by this Court.

9. That being the case, this Court finds that it has no jurisdiction to entertain the application and hereby dismisses the same.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 6<sup>TH</sup> DAY OF MARCH, 2026.**

**A. MABEYA, FCI Arb**

**JUDGE**

