



REPUBLIC OF KENYA



**Republic v Recep (Criminal Revision E091 of 2025)  
[2026] KEHC 2545 (KLR) (23 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2545 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CRIMINAL REVISION E091 OF 2025  
WM MUSYOKA, J  
FEBRUARY 23, 2026**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**UGUZ RECEP ..... RESPONDENT**

*(Arising from orders, in Busia MCSO No. E033 of 2025, by Hon. Nyaloti Ameyo, Chief Magistrate, CM, of 15th and 16th December 2025)*

**RULING**

1. These revision proceedings were initiated by way of a letter, dated 17<sup>th</sup> December 2025, by the Office of the Director of Public Prosecutions, on behalf of the Republic, the applicant herein, which sought inquiry into the propriety of proceedings in *Busia MCSO No. E033 of 2025*, targeting orders made on 15<sup>th</sup> and 16<sup>th</sup> December 2025, by the trial court, asking this court to review, revise or set aside the said orders, and for the respondent to be remanded in custody pending sentencing, which is scheduled for 2<sup>nd</sup> March 2026.
2. The background, to the matter, is that the respondent had been tried, and was convicted, vide a judgement that was delivered on 15<sup>th</sup> December 2025. Upon the conviction, Ms. Omolo, for the respondent, made a statement in mitigation, and sentence was fixed for 16<sup>th</sup> December 2025, with the respondent being remanded in custody to await a pre-sentence report.
3. On 16<sup>th</sup> December 2024, the probation office indicated that the pre-sentence report was not ready, and requested for 14 days. Ms. Omolo applied for the release of the respondent, on bond or bail, pending sentence, on grounds that he was ill. That application was allowed, and the bond, which had been automatically cancelled upon conviction, was reinstated, pending presentation of the pre-sentence report. The matter was then fixed for mention, on 2<sup>nd</sup> March 2026, for sentencing. It was this order, of



admitting the respondent to bond, upon conviction for defilement, awaiting the pre-sentence report, that provoked the initiation of these revision proceedings.

4. These revision proceedings are pegged on sections 362 and 364 of the [Criminal Procedure Code](#), Cap 75, Laws of Kenya. Article 165(6)(7) of the [Constitution](#) is also relevant. Both sets of provisions vest the High Court with powers over subordinate courts. Whereas the constitutional provisions confer what it refers to as supervisory jurisdiction, the [Criminal Procedure Code](#) confers a revisional jurisdiction. The constitutional provisions are general, while the provisions in the [Criminal Procedure Code](#) are limited to criminal proceedings. The two sets of provisions, however, cover the same subject, conferment, on the High Court, of jurisdiction to oversee how the subordinate court discharges its mandate.
5. Under the Constitution, the power is to look at the record of the trial court, and to give directions on the way forward, with an eye on effective administration of justice. The [Criminal Procedure Code](#) provisions focus on legality, propriety, correctness and regularity of proceedings and orders. The 2 provisions are clearly on matters of procedure, and not substance. Legality would largely turn on jurisdiction, in terms of whether the matter is before the proper court, whether the court before which the matter is placed has been vested with power to determine it, whether that court has the legal competence to handle it, whether it is a matter that ought to be placed before it. Jurisdiction is, usually, a substantive matter, but touching on process, with respect to who has power to do what. Propriety and correctness are related. They are about jurisdiction and procedure, whether an order was proper and correct, not in terms of substance, but in view of the procedural arrangements. Regularity is also about process, whether the processes, indulged in to reach the outcome, followed the laid down procedure.
6. The revisional jurisdiction, in the criminal process, is akin to the review procedure under the [Civil Procedure Act](#), Cap 21, Laws of Kenya, and the [Civil Procedure Rules](#), which also goes to process, focusing on errors on the record, discovery of new evidence after completion of proceedings, and related matters.
7. Supervisory jurisdiction, which is also exercised under Judicial Review, and revisional jurisdiction are distinguished from appeals, which turn largely on the substance of the impugned decision. Procedure can be subsumed in appeal, and an appeal can be on both substance and procedure. However, supervisory jurisdiction and revisional jurisdiction are limited to procedure. It is for that reason that, under section 364(5) of the [Criminal Procedure Code](#), where 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.”
8. The principal issue here is whether it is open to a trial court, upon pronouncing a conviction, to admit the convict on bond pending sentence, particularly in connection with serious offences, such as defilement.
9. Bail/bond is a constitutional right, which is pegged to the constitutional principle of presumption of innocence. Since a suspect, awaiting trial, is presumed to be innocent until proven guilty, in the trial, he is entitled to enjoy the liberties of an innocent person, which include that of movement and association. That would entitle the suspect to be out there, free like any other innocent person, until the charges against him are established.
10. Upon conviction, that presumption is lost, so that a convict who appeals against the conviction would not be entitled to bail/bond as a constitutional right. Since the constitutional right to bail/bond hangs on the presumption of innocence, the same is lost, automatically, upon conviction, and it is on that basis that the bail/bond is cancelled. Indeed, the court does not even have to pronounce the cancellation. Post-conviction proceedings, which have to be conducted after an adjournment, such



as the sentencing hearing, ought to be done while the convict is in custody. To that extent, then, the decision, of the trial court, to purport to reinstate bond, upon conviction, to give the convict freedom of movement pending sentence, is an anathema. It would be improper, as upon conviction, there would be no constitutional right to bail/bond.

11. In cases where a person, such as a convict, does not enjoy the presumption of innocence, bail/bond would not be a constitutional right, to be automatically considered, as a matter of right. Grant of bail/bond would be subject to consideration upon very stringent conditions, in accordance with the principles that were laid out in *Arvind Patel vs. Uganda* [2003] UGS 25 (Oder, JSC) and Samuel Macharia Njagi vs. Republic [2013] eKLR (Abuodha, J).
12. In this case, it was submitted, on 16<sup>th</sup> December 2025, that the respondent had tuberculosis, and needed medication, and medical reports were presented, to support that submission. The law is not a respecter of persons. The fact that the convict was a foreigner, from Europe, was no justification for him to be extended preferential treatment. He ought to have been treated like any other convict. The prison service has health facilities, and can make arrangements for inmates to receive treatment, outside of the prison, in cases where the facilities, internal to prison, do not have capacity to handle the treatment in question. Illness should not be an excuse to extend preferential treatment.
13. The second element to it is the fact that the conviction was for defilement. Defilement is one of those offences that attract statutory minimum sentences. The Supreme Court, in recent judgments, has pronounced that statutory minimum sentences are lawful and constitutional. One effect of provisions which prescribe statutory minimum sentences of imprisonment, is that it removes the discretion of the sentencing court, by confining or limiting the sentence, available upon conviction, to that of imprisonment. It is on that account that some courts view statutory minimum sentences as mandatory, but the Supreme Court does not agree with that. The pre-sentence report, that the trial court called for, could be of very little use, given that the only sentence available would-be imprisonment. There are no options, due to the minimums prescribed. The minimum sentence of imprisonment would be the most lenient available. That would lock out fines, probation, community service, and the like.
14. The respondent was convicted under section 8(1)(4) of the *Sexual Offences Act*, Cap 63A, Laws of Kenya. Section 8(1) defines defilement, while section 8(4) prescribes the penalty or sentence, where the victim is aged 16 or 17 years. The minimum sentence, under section 8(4), is 15 years. The victim, in this case, was 17 years old. Upon conviction, the sentence, to be imposed, ought to be a minimum of 15 years imprisonment, and the sentencing court has no luxury of alternatives.
15. The convict herein is waiting to be sentenced, to a minimum of 15 years imprisonment, or more. Under those circumstances, it would be improper to release such a convict on bail/bond, pending sentence. The incentive, to flee, would be just too high. He is a foreigner, not a Kenyan citizen, and chances of apprehension could be nil. The fact that his passport is held in court is not an excuse. It would be tempting fate, to admit such a convict to bond, when convicts should not even be allowed to be free.
16. Having carefully reflected on the proceedings, that were conducted, in *Busia MCSO No. E033 of 2025*, on 16<sup>th</sup> December 2025, I find that the same are illegal, incorrect, irregular and improper. The respondent, being a convict, should not have been freed on bail/bond. Consequently, I hereby revise the order of the trial court, of 16<sup>th</sup> December 2025, which freed the respondent on bond, and substitute it with an order cancelling that bond, and directing that the respondent be held in remand custody, awaiting sentence. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 23<sup>RD</sup> DAY OF FEBRUARY 2026.**



**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Onanda, instructed by the Director of Public Prosecutions, for the Republic.

