



**Tembea alias Nice v Republic (Criminal Revision E483 of 2025)
[2026] KEHC 2607 (KLR) (25 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2607 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL REVISION E483 OF 2025
WM KAGENDO., J
FEBRUARY 25, 2026**

BETWEEN

ALI OMAR TEMBEA ALIAS NICE APPLICANT

AND

THE REPUBLIC RESPONDENT

(Revision of sentence emanating from Msambweni SO Case No. 22 of 2019)

RULING

1. The Applicant was charged with and convicted of the offence of defilement contrary to Section 8(1) as read together with Section 8(3) of the *Sexual Offences Act* and was sentenced to twenty (20) years' imprisonment.
2. The matter came before this Court during a supervisory visit to the correctional facility. The Applicant was presented in person. The Court observed that he is seventy-five (75) years old, frail, and suffering from leprosy, a condition confirmed by medical reports from Coast General Hospital. The reports indicate a chronic and degenerative illness affecting his limbs and requiring continuous medical management.
3. This Court exercises supervisory and revisionary jurisdiction pursuant to Article 165(6) and (7) of *the Constitution* and is guided by Section 4 of the *Probation of Offenders Act* in considering non-custodial measures. In determining whether to interfere with sentence, the Court must balance the gravity of the offence, the interests of the victim, community protection, proportionality of punishment, and the offender's personal circumstances, including age and health.
4. There is no doubt that defilement is a grave offence that seriously violates the dignity and bodily integrity of the victim. Sentences imposed for such offences must reflect denunciation and deterrence. However, sentencing must also remain humane and consistent with constitutional values.



5. Article 28 of *the Constitution* guarantees every person the right to inherent dignity and to have that dignity respected and protected. This right extends to persons lawfully incarcerated. While imprisonment is a lawful consequence of conviction, it must not operate in a manner that results in inhuman or degrading treatment, particularly where advanced age and severe illness substantially diminish the penal objectives of continued incarceration.
6. The Court has considered that the Applicant has been in custody for a substantial period of time, has maintained good institutional conduct, and is of advanced age with a serious chronic medical condition. In the totality of these exceptional circumstances, the Court is persuaded that the interests of justice would be sufficiently served by deeming the custodial term already served and imposing a structured non-custodial sentence.
7. Accordingly, the sentence of twenty (20) years' imprisonment is hereby set aside.
8. The Applicant is hereby resentenced to the period already served in custody and he is placed on probation supervision for a period of three (3) years under the supervision of the Probation Officer, Mombasa County, subject to the following conditions:
 1. He shall reside at his declared residence and shall not relocate without the consent of the Probation Officer.
 2. He shall report to the Probation Officer and or the area chief as directed owing to his age and illness as directed and comply with all lawful instructions issued.
 3. He shall not commit any criminal offence during the probation period.
 4. He shall have no contact, direct or indirect, with the complainant or the complainant's family.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 25TH DAY OF FEBRUARY 2026.
RULING DELIVERED THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM.**

WENDY KAGENDO MICHENI

JUDGE

