



REPUBLIC OF KENYA



**KENYA LAW**  
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**Otwori v Republic (Criminal Revision E057 of 2025)  
[2026] KEHC 4457 (KLR) (10 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4457 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CRIMINAL REVISION E057 OF 2025  
TW CHERERE, J  
MARCH 10, 2026**

**BETWEEN**

**KENNEDY MOKAYA OTWORI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant, Kennedy Mokaya Otwor, was charged in Nyamira MCCR No. 1018 of 2016 with the offences of defilement contrary to section 8(1) as read with section 8(3) of the *Sexual Offences Act* No. 3 of 2006 and deliberate transmission of HIV contrary to section 26(1)(a) of the *Sexual Offences Act* No. 3 of 2006. Upon conviction, he was sentenced to twenty (20) years and fifteen (15) years imprisonment respectively, being the statutory minimum sentences prescribed under the Act.
2. In his supporting affidavit and written submissions, the applicant states that he did not lodge an appeal within the stipulated time due to ignorance and lack of proper legal guidance. He urges the Court to review and reduce the sentence taking into account his alleged rehabilitation while in prison, his family circumstances and his health condition. He further prays that the Court considers the period he spent in custody and orders that the sentence run from the date of his arrest pursuant to section 333(2) of the Criminal Procedure Code.
3. The application was not opposed by the respondent. I have considered the application, the supporting affidavit, the written submissions and the record of the trial court.
4. The jurisdiction of this Court in revision is conferred by sections 362 and 364 of the Criminal Procedure Code. Under section 362 of the Code, the High Court may call for and examine the record of any criminal proceedings before a subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed.



5. Section 8(3) of the *Sexual Offences Act* provides that a person who commits an offence of defilement with a child aged between twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years. Section 26(1) of the same Act provides that a person who, having actual knowledge that he or she is infected with HIV or any other life-threatening sexually transmitted disease, intentionally, knowingly and wilfully does anything which he or she knows or ought reasonably to know will infect another person with such disease commits an offence and is liable upon conviction to imprisonment for a term of not less than fifteen years but which may extend to life imprisonment.
6. This Court is guided by the decision of the Supreme Court in *Francis Karioko Muruatetu & Another v Republic; Katiba Institute & 5 Others (Amicus Curiae)* [2021] KESC 31 (KLR) (Muruatetu 2), where the Court clarified that the earlier decision declaring the mandatory death sentence unconstitutional was confined to murder cases under section 204 of the Penal Code and does not extend to other offences carrying mandatory or minimum sentences.
7. The effect of that clarification is that statutory provisions prescribing mandatory or minimum sentences in other legislation remain valid and enforceable unless successfully challenged in appropriate proceedings. Consequently, the *Sexual Offences Act* remain valid law, and the sentences imposed by the trial court cannot be faulted.
8. The applicant has also urged this Court to consider the period he spent in custody pursuant to section 333(2) of the Criminal Procedure Code. The record shows that the applicant was arrested on 26<sup>th</sup> August 2016 and remained in custody throughout the trial until his conviction on 17<sup>th</sup> November 2017.
9. Section 333(2) of the Criminal Procedure Code requires a sentencing court to take into account the period spent in custody prior to conviction. The record demonstrates that the Applicant did not benefit from that application of the law.
10. In the result, the final orders of the Court are as follows:
  1. In the result, the Applicant's undated Notice of Motion seeking revision of the sentences is declined
  2. Pursuant to section 333(2) of the Criminal Procedure Code, the sentence of imprisonment imposed by the trial court shall be computed from 26<sup>th</sup> August 2016, being the date of the Applicant's arrest.

**DELIVERED AT NYAMIRA THIS 10<sup>TH</sup> DAY OF MARCH 2026**

**WAMAE. T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Hilda

Applicant - Present

For the DPP - Mr. Chirchir (SADPP)

