



**Nur v Republic (Miscellaneous Criminal Application  
E006 of 2025) [2025] KEHC 4956 (KLR) (25 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4956 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
MISCELLANEOUS CRIMINAL APPLICATION E006 OF 2025**

**JN ONYIEGO, J  
APRIL 25, 2025**

**BETWEEN**

**ABDIJABAR MOHAMMED NUR ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being a revision application against the sentence of Hon. M. Kimani (S.R.M.) delivered on 05.12.2021 in sexual offence case number E034 of 2021 Mandera law courts.)*

**RULING**

1. The appellant herein, Abdijabar Mohamed Nur was charged with the offence of defilement contrary to Section 8 (1) as read with Section 8 (3) of the [Sexual Offences Act](#), 2006. The particulars of the main charge were that the appellant on diverse dates between 11.09.2021 and 13.09.2021 at Central Location in Mandera East Sub County within Mandera County, he intentionally and unlawfully caused his penis to penetrate the vagina of S.Y.A., a child aged 15 years.
2. The appellant also faced an alternative charge of committing an indecent act with a child contrary to Section 11 (1) of the [Sexual Offences Act](#), 2006. Particulars were that on diverse dates between 11.09.2021 and 13.09.2021 at Central Location in Mandera East Sub County within Mandera County, intentionally touched the vagina of the S.Y.A., a child aged 15 years.
3. At the conclusion of the trial, the trial magistrate convicted the appellant in respect of the main charge of defilement contrary to Section 8 (1) as read with Section 8(2) of the [Sexual Offences Act](#), 2006 and sentenced him to serve a term of imprisonment of twenty (20) years to be calculated from when the appellant took plea.
4. Aggrieved by the said conviction and sentence, the appellant lodged a petition of appeal dated 09.12.2022 and filed on 20.12.2022 setting out various grounds:



5. Upon considering the appeal, the court delivered its judgment on 9-02-2024 affirming the conviction but reviewed sentence from 20years to 10years.Undeterred, the applicant has again approached the court vide a notice of motion dated 31-07-2025 seeking review of the sentence downwards on grounds that the sentence imposed should run concurrently and that he has reformed.
6. In response, the prosecution opposed the application on grounds that the court is functus officio.
7. I have considered the application herein and the objection thereof. The application is anchored on the ground that the court did not order that the sentences to run concurrently. A perusal of the lower court records is clear that the applicant was charged with one count and an alternative count. He was only convicted of the main count.
8. There was no conviction on any other count to run concurrently or consecutively with the other. In my view, the application is misconceived and totally misplaced. In a nutshell, this court is functus officio having made a determination on the impugned sentence. To that extent, the application is dismissed for want of merit.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 25<sup>TH</sup> DAY OF APRIL 2025**

**J. N. ONYIEGO**

**JUDGE**

