



REPUBLIC OF KENYA



**Wachoka v Republic (Miscellaneous Criminal Application E074 of 2024)
[2024] KEHC 14892 (KLR) (26 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14892 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CRIMINAL APPLICATION E074 OF 2024**

**JM NANG'EA, J
NOVEMBER 26, 2024**

BETWEEN

JOSPHAT GITHU WACHOKA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was convicted of Defilement Contrary to Section 8 (1) as read with Section 8 (3) of the [Sexual Offences Act](#) No. 3 of 2006 vide Criminal Case No. 13 of 2011 before the Chief Magistrate's Court at Nakuru and sentenced to 30 years imprisonment. He preferred an appeal to this court being Criminal Appeal No. 125 of 2014 against both conviction and sentence according to the record herein . The appeal partly succeeded as the 30 years imprisonment was substituted with a 20 years prison term that was directed to commence from the date of the applicant's first conviction . This application is now brought seeking resentencing by invocation of the provisions of section 333 of the [Criminal Procedure Code](#) . In particular, the applicant wants his sentence to commence from the date he was remanded in custody awaiting trial.
2. The Prosecution Counsel (Ms Sang) replied that this court has no jurisdiction to resentence the applicant in light of the decision of a court of concurrent jurisdiction that determined the appeal. Counsel also brought to the court's attention that the applicant had filed a Miscellaneous Criminal Application No. E084 of 2022 before this court seeking similar orders in resentencing. Reliance is placed on judicial determinations in [Daniel Otieno Oracha v Republic](#) (2019) eKLR and [John Kagunda Kariuki v Republic](#) (2019) eKLR in which the important principle of stares decisis was underscored.



3. I have perused the application, the applicant's submissions and the Prosecution Counsel's submissions in reply. The proviso to section 333 (2) of the *Criminal Procedure Code* enacts thus:

“Where a person sentenced under sub section (1) , has, prior to such sentence , been held in custody, the sentence shall take account of the period spent in custody”.

4. The record indeed shows that the applicant did raise the issue of his sentence in the aforesaid appeal No. 125 of 2014. My sister (Maureen A. Odero J) directed the reviewed sentence of 20 years imprisonment to run from the date of the applicant's first conviction. Another court of concurrent jurisdiction (H. K Chemitei J) dismissed the convict's similar application for resentencing to wit; Miscillaneous Criminal Appliaction No. E084 2022.

5. Clearly, this application is unnecessary given the other superior courts' pronouncements on the matters raised by the applicant. As observed by H.K Chemitei J, the applicant is abusing the court's process by seeming to forum-shop which conduct is highly deprecated.

6. Accordingly, I concur with the prosecution that I have no jurisdiction to make further orders on the applicant's sentencing. This application is therefore dismissed.

J. M. NANG'EA, JUDGE.

RULING DELIVERED THIS 26TH DAY OF NOVEMBER 2024 IN THE PRESENCE OF:

The State, Ms Sang

The Applicant, present

The Court Assistant, Lepikas

J. M. NANG'EA, JUDGE.

