



**Kipchirchir v Director of Public Prosecutions (Miscellaneous Application E178 of 2023) [2024] KEHC 16116 (KLR) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16116 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS APPLICATION E178 OF 2023  
JM NANG'EA, J  
DECEMBER 20, 2024**

**BETWEEN**

**ANTHONY KIRUI KIPCHIRCHIR ..... APPLICANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... RESPONDENT**

**RULING**

1. By this undated Chamber Summons the applicant prays for a non-custodial sentence. He was charged with and convicted of the offence of possession of narcotic drugs in File No. E2187 of 2022 before the Chief Magistrate's Court at Nakuru and sentenced to a fine of Kshs.100,000. In default of settlement of the fine, the applicant would serve out a period of 10 years in prison. He now seeks review of the sentence lamenting that it is "harsh and excessive."
2. The applicant had a similar application before the trial court but it was dismissed on the ground that the court was "functus officio."
3. The Prosecution Counsel has not responded to the application.
4. The applicant's complaint is that the sentence imposed by the lower court is excessive or harsh. It is not, however, being contended that the sentence is illegal as to invite this court's power of revision of subordinate court orders pursuant to Article 165(6) of the *Constitution* and Section 362 of the *Criminal Procedure Code*. It would therefore appear that the remedy available to the applicant if aggrieved by the sentence is to lodge an appeal to this court.
5. Consequently, this application is dismissed as an appeal cannot be disposed of by means of a Miscellaneous Application such as filed herein.

**J. M. NANG'EA, JUDGE**

**RULING DELIVERED ON THIS 20<sup>TH</sup> DAY OF DECEMBER, 2024 IN THE PRESENCE OF:**



The Prosecution Counsel, Ms. Sang

The Applicant

The Court Assistant, Mr. Lepikas

**J. M. NANG'EA**

**JUDGE**

