



**Kanyili v Republic (Miscellaneous Criminal Application
E019 of 2021) [2023] KEHC 21620 (KLR) (28 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21620 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E019 OF 2021**

JN ONYIEGO, J

JULY 28, 2023

BETWEEN

WILLIAM MUTISYA KANYILI APPLICANT

AND

REPUBLIC RESPONDENT

(Appeal vide Cr. Appeal No. 59/2020)

RULING

1. The applicant herein was arraigned before Garissa Law Courts charged with two counts. Count 1 he was charged with the offence of gang rape contrary to section 10 of the *Sexual Offences Act* No. 3 of 2006. Particulars were that on the 1st day of July, 2019 in Garissa Township within Garissa County, jointly with another not before court willfully and unlawfully caused his genital organ namely penis to penetrate the genital organ namely vagina of DNM without her consent.
2. Count two he was charged with Robbery contrary to section 296 (1) of the *penal code*. Particulars were that on the 1st day of July, 2019 in Garissa Township within Garissa County jointly with another not before court, robbed DNM the following: 1. Techno F1 Mobile phone worth Kshs; 7500/=, 2. And cash Kshs;780/= and immediately after the time of the robbery threatened to use actual violence to the said DNM.
3. Upon returning a plea of not guilty, the matter proceeded to full trial. Consequently, he was convicted and sentenced to 40 years imprisonment for count one and 7 years' imprisonment for count two.
4. Aggrieved by the conviction and sentence, the applicant filed an appeal vide Cr. Appeal No. 59/2020. On 24-9-2020, Justice Kariuki dismissed the appeal against conviction. He however, reviewed sentence by substituting 40 years with 15 years' imprisonment for count 1.



5. Undeterred, he moved this court vide an undated application filed on 23-2-2021 seeking review of Sentence again on grounds that the trial did not take into account the period spent in remand custody pursuant to Section 333 (2) of the *Criminal Procedure Code*.
6. In response, Mr. Kihara opposed the application on grounds that the court is functus officio.
7. I have considered the application before court and the response thereof. There is no doubt that the appellant was convicted and sentenced to 40 years (count 1) and 7 years (Count 2) to run concurrently.
8. My brother Justice Kariuki did consider the aspect of sentence and reduced it from 40 years to 15 years. This court being a court of concurrent jurisdiction has no powers to further review that sentence. The appellant's recourse is the court of appeal and not this court. He should be grateful the sentence was reduced to even less than half.
9. For those reasons, the application is dismissed.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT GARISSA THIS 28TH DAY OF JULY, 2023

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J.N. ONYIEGO
JUDGE

