



REPUBLIC OF KENYA



KENYA LAW
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**JMM v Republic (Miscellaneous Petition E003 of 2020)
[2022] KEHC 241 (KLR) (24 March 2022) (Ruling)**

Neutral citation: [2022] KEHC 241 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
MISCELLANEOUS PETITION E003 OF 2020**

MW MUIGAI, J

MARCH 24, 2022

BETWEEN

JMM APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein JMM was charged in the Chief Magistrate Criminal Case No. 137 of 2014 with the offence of incest contrary to Section 8(1) (3) of the [Sexual offences Act No. 3 of 2006](#) and convicted to serve a period of 25 years imprisonment on 29/01/2014.
2. Aggrieved by the conviction and sentence the Applicant filed an Appeal in this court being Machakos Criminal Appeal No. 24 of 2015 and the appeal was dismissed and the conviction and sentence upheld.

Chamber Summons

3. Aggrieved by the sentence, the Applicant on 13th July, 2020 filed in Court a Petition under certificate of urgency seeking the following prayers:-
 - a. That the Court direct that the time the Applicant spent in remand be factored in his current sentence under section 333(2) of Criminal Procedure Code.
 - b. That the Court revise the sentence under Article 50(2) of the [Constitution of Kenya 2010](#).
4. On 13th October, 2020 a letter to the Chief Magistrate Machakos calling for the Lower Court file CM CR. Case No. 137 of 2014 to be forwarded was sent.
5. A reminder letter was sent on 18th January, 2020 calling for the same original file.
6. A letter dated 15th March, 2021 by the Applicant to the Kenya Court of Appeal for the withdrawal of Appeal was filed.



7. Another letter by the Deputy Registrar Machakos was sent to the Deputy Registrar Court of Appeal in regard to the Applicant's letter dated 15th March, 2021.

Applicant's Submissions

8. That the Trial court when imposing the sentence of 25 years imprisonment did not put into account the period he spent in custody. He asked court to consider Section 333(2) of *Criminal Procedure Code*.

Respondents Submissions

9. It was submitted that the Applicant was charged with the offence of Incest contrary to Section 20(1) of the Sexual offences Act No. 3 of 2006. The Senior Magistrate (Hon. P. N. Gesora) sentenced the accused person to serve 25 years' imprisonment.
10. The applicant was arrested on 28th January, 2014. He was arraigned in court on the 29th January, 2014 for plea. He entered a plea of guilty and the facts were read to him, which he confirmed to be correct. He was convicted and sentenced to serve 25 years' imprisonment.
11. The Applicant appealed to the High Court via Criminal Appeal No. 24 of 2015, whereupon Hon. Justice Kemei dismissed the appeal and upheld the conviction and sentence.

Decision

12. This Court finds that it lacks requisite jurisdiction to hear and determine the instant application as the appeal was heard and determined by Hon. D. K. Kemei – J a Court of similar, equal, competent and concurrent jurisdiction as this Court.
13. The Appellant may prepare an Appeal in the Court of Appeal. The instant application is dismissed.

DELIVERED SIGNED & DATED IN OPEN COURT ON 24TH MARCH, 2022 (VIRTUAL CONFERENCE)

M.W. MUIGAI

JUDGE

IN THE PRESENCE OF:

JMM - Applicant

Mwongera - for the Respondent

Geoffrey - Court Assistant

