



**Mwaura v Republic (Criminal Revision 39 of 2020)
[2022] KEHC 13526 (KLR) (Crim) (23 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13526 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION 39 OF 2020
CW GITHUA, J
SEPTEMBER 23, 2022**

BETWEEN

JOSEPH MWAURA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, Joseph Mwaura was charged jointly with two others with two offences. In count 1, he was charged with the offence of gang rape contrary to section 10 of the *Sexual Offences Act* while in count 2 he was charged with the offence of assault causing actual bodily harm contrary to section 251 of the *Penal Code*.
2. After a full trial, the applicant and his co-accused were found guilty and were convicted of each count. They were sentenced to serve 10 years imprisonment in count 1 and two years imprisonment in count 2. The sentences were ordered to run concurrently.
3. In an undated notice of motion filed on February 27, 2020, the applicant has moved this court seeking revision of his sentence on grounds that he was a first offender and was remorseful for the offences he committed. He sought a non custodial sentence noting that he had undertaken several courses during the period of his incarceration that had improved his character and life skills which would enable him become a useful member of the society upon his release.
4. From the title of his application, I noted that the applicant had previously applied for revision in Criminal Revision No 703 of 2018. I have called for the file in the aforesaid application and upon its perusal, I have found that the application therein was similar in every respect with the current application. The application was heard and determined by Kimaru J on December 18, 2019. The Hon Judge declined the applicant's request to have his ten years custodial sentence substituted with a non



custodial sentence but revised the sentence to the extent that it would take effect from the date of the applicant's arrest.

5. In view of the foregoing, I find that in filing this application, the applicant wanted to have another bite of the cherry in circumstances which amounted to an abuse of the court process. Having made a decision in his previous application, this court lacks jurisdiction to entertain a subsequent similar application since it is now functus officio. If the applicant was aggrieved by Kimaru J's decision, he ought to have filed an appeal to the Court of Appeal instead of filing the current application. It is consequently my view that the instant application is incompetent and it is hereby struck out.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF SEPTEMBER 2022.

C. W. GITHUA

JUDGE

In the presence of:

The Applicant

Mr. Kiragu for the respondent

Ms Karwitha: Court Assistant

