



**Gathige v Republic (Miscellaneous Criminal Application  
E008 of 2022) [2022] KEHC 14733 (KLR) (31 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14733 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
MISCELLANEOUS CRIMINAL APPLICATION E008 OF 2022**

**GL NZIOKA, J**

**OCTOBER 31, 2022**

**BETWEEN**

**FRANCIS NGUGI GATHIGE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. By an application filed in court on February 22, 2022, the applicant is seeking for orders that, the sentence meted upon him *vide* chief magistrate's Criminal case No S/O 3 of 2016, be reduced pursuant to the provisions of section 333(2) of the [Criminal Procedure Code](#) (Cap 75) Laws of Kenya.
2. The application is supported by an affidavit he has sworn in which he deposes that, he was charged with the offence of; incest contrary to section 20(1) of the [Sexual Offences Act](#) No 3 of 2006. That he was convicted on the same and sentenced to serve 15 years imprisonment.
3. He further avers that, he appealed to the High Court and the sentence was reduced to 15 years, however, the learned judge, the hon Mr Justice R Mwangi, failed to consider the period he was in custody. He now seeks that, the same be taken into account
4. The respondent did not file a formal response to the application. Be that as it may, I have considered the application and I find as follows;-
  1. Upon conviction of an offender, the provisions of section 333(2) of the [Criminal Procedure Code](#) requires that, if he has been in custody, the period so spend therein be considered in any sentence meted out. It is the trial court to comply with the subject provisions.
  2. I have considered the fact that, upon conviction the applicant appealed to the High Court *vide* HCCRA No 9 of 2017, and upon considering the appeal the court dismissed it in its entirety.



Of great importance, the appellate court observed that, the sentence meted out by the trial court was too lenient.

3. The decision of the High Court on appeal renders this court functus officio. The applicant should have canvassed the issues herein in the aforesaid appeal. He cannot be allowed to litigate in piece meals.

In conclusion I find and hold that, the court is functus officio and strike out the application and/or dismiss it for lack of merit.

It is so ordered.

**DATED, DELIVERED AND SIGNED ON THIS 31ST DAY OF OCTOBER 2022.**

**GRACE L.NZIOKA**

**JUDGE**

In the presence of:-`

Applicant in person

Ms Maingi for the Respondent

Ms Ogutu- Court Assistant

