



**Wangari v Republic (Miscellaneous Criminal Application 27 of 2020)
[2022] KEHC 16987 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16987 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS CRIMINAL APPLICATION 27 OF 2020
GWN MACHARIA, J
DECEMBER 20, 2022**

BETWEEN

PAUL NDEGWA WANGARI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

RULING ON APPLICATION SEEKING RESENTENCING

1. The Applicant herein moved the court *vide* a home-made Notice of Motion filed alongside a supporting affidavit on July 8, 2020. He basically prays that he be reheard on sentence; simply stated that, the court should set aside the life imprisonment sentence imposed on him and based on the mitigation he offers and the circumstances of the case, a more lenient sentence be imposed.
2. A brief background to the application is that the Applicant was charged with the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act*, No 3 of 2006. It was alleged that on the night of May 12, 2012 in Naivasha Municipality within Nakuru County, intentionally and unlawfully did cause his genital organ namely penis to penetrate the genital organ namely vagina of HWN a girl aged 9 years. In the alternative, he was charged with indecent act with a child contrary to Section 11(1) of the *Sexual Offences Act*, No 3 of 2006 in that he indecently and unlawfully caused his genital organ namely penis to come into contact with the genital organ namely vagina of HWN a girl aged 9 years.
3. After a full trial, the Applicant was found guilty, convicted and sentenced to serve life imprisonment on February 27, 2013. His first appeal to the High Court was dismissed in its entirety *vide* a judgment delivered by Emukule, J (as he then was) in Nakuru High Court Criminal Appeal No 30 of 2013.
4. During the hearing of the application, the Applicant in his submission made a disclosure that a second appeal to the Court of Appeal too, was dismissed.



5. I pose here and say that this is a matter that has been decided with finality. The Applicant has exhausted all the appellate processes and this court being inferior to the Court of Appeal cannot further adjudicate on it. By virtue of hierarchical jurisdiction, I am *functus officio* to the matter. Attempting to sit on the matter, even on resentencing would amount to a misconduct as I cannot purport to be a court superior to the Court of Appeal.
6. In any event, as at date, it is settled by the Supreme Court *vide* directions given in a Ruling in the famous [*Francis Kariokor Muruatetu Case*](#) that the *ratio decidendi* therein only applies to murder trials.
7. In the premises, the application herein has no merit and the same is dismissed.

DATED AND DELIVERED AT NAIVASHA THIS 20TH DECEMBER, 2022.

G W NGENYE-MACHARIA

JUDGE

In the presence of:

1. Applicant in person.
2. Mr Michuki for the Respondent.

