Wanjiru & another v Republic (Criminal Miscellaneous Application E083 of 2024) [2025] KEHC 2264 (KLR) (19 February 2025) (Ruling)

Neutral citation: [2025] KEHC 2264 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CRIMINAL MISCELLANEOUS APPLICATION E083 OF 2024

HI ONG'UDI, J

FEBRUARY 19, 2025

BETWEEN

BENSON KIRAGU WANJIRU ..... 1ST APPLICANT

SUSAN MUTHONI WARUGURU ..... 2ND APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. Benson Kiragu Wanjiru (1st applicant) and Susan Muthoni Waruguru (2nd applicant) are seeking release on non-custodial sentences.

2. Both applicants were charged and convicted after a full hearing in Molo Chief Magistrate's court Criminal Case No. E1840 of 2022 on two (2) counts of:

   i. Assault in resisting arrest contrary to section 253 (a) of the *penal code*.

   ii. Assault causing actual bodily harm contrary to section 251 of the *penal code*.

3. Upon conviction they were each sentenced to serve four (4) years imprisonment on each count with an order that the sentences run consecutively. This was on 19th July, 2023.

4. On 11th October, 2023 they both filed a Misc. Criminal Application No. E133 of 2023, in which they sought to have the order for the sentences to run consecutively reviewed and an order for the sentences to run concurrently to be issued.

5. On 13/5/2024 the applicants appeared before Muhochi J for the hearing of their review application. The same was heard and the orders reviewed as sought. Their sentences are to run concurrently.

6. The applicants are now here for a further review of their sentence to a non-custodial one. It is clear that the sentence sought to be reviewed is no longer the one by the Magistrate's Court but the one by Muhochi J of the High Court.

7. As clearly pointed out by M/s Okok, counsel for the respondent this court cannot review the sentence by Muhochi J since we are courts of equal status. This court is therefore functus officio and I therefore decline to issue any orders in respect of this application. If dissatisfied with the orders by Muhochi J they should move to the Court of Appeal.

8. The upshot is that the application lacks merit and is struck out. File closed.

9. Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 19TH DAY OF FEBRUARY, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE