



**Nyaga v Republic (Miscellaneous Criminal Application
E031 of 2023) [2025] KEHC 4390 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4390 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS CRIMINAL APPLICATION E031 OF 2023**

MA ODERO, J

APRIL 4, 2025

BETWEEN

SAMSON MAINA NYAGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Samson Maina Nyaga filed an application seeking review of the sentence imposed upon him by the trial court – he prays that the period of time which he spent in pre-sentence remand custody be factored into his sentence.
2. The Applicant was convicted of the offence of Rape vide a judgment delivered at the Othaya Law Courts on 26th November 2018.
3. Following his conviction the Applicant was on 3rd December 2018 sentenced to serve ten (10) years imprisonment.
4. Being dissatisfied with the decision of the trial court, the Applicant appealed to the High Court vide Criminal Appeal No. 56 of 2018. Through the judgment dated 16th July 2020, Hon. Justice A. Mshilla dismissed the appeal in its entirety. The Applicant then filed this Application seeking review of his sentence.
5. The powers of the High Court to review sentence is provided for by Section 362 of the *Criminal Procedure Code* Cap 75, Laws of Kenya.
6. The present application is premised upon Section 333 of the *Criminal Procedure Code*, which provides that the period of time spent in remand custody otherwise known as the period of pre-trial detention ought to be considered by the sentencing court.



7. This is a case where the Appellant filed an appeal to the High Court. The High Court dismissed his appeal, thereby upholding both the conviction of the Applicant as well as the sentence which was imposed by the trial court.
8. In the circumstances the High Court is now 'functus officio'. The Appellant cannot come back to a court of concurrent jurisdiction seeking to review the decision of the Judge.
9. Having filed an appeal challenging his sentence which appeal was dismissed, the Applicant cannot now seek a review of the same sentence which he had already appealed against. The Applicant is seeking by this application to have a second bite at the cherry. The Judge who heard the appeal considered the sentence imposed on the Applicant and found the same to be appropriate. I am not inclined to interfere with that decision.
10. Finally this Application for review of sentence fails and is hereby dismissed.

DATED IN NYERI THIS 4TH DAY OF APRIL 2025.

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MAUREEN A. ODERO

JUDGE

