



**Gwaro v State (Miscellaneous Criminal Application E100 of 2023)
[2024] KEHC 2966 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2966 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
MISCELLANEOUS CRIMINAL APPLICATION E100 OF 2023**

TA ODERA, J

MARCH 6, 2024

BETWEEN

RICHARD NYAMBOGA GWARO APPLICANT

AND

STATE RESPONDENT

RULING

1. The applicants were charged with Grievous harm in Ogembo Criminal case no 822 of 2012 and they were convicted and sentenced to life imprisonment.
2. They were aggrieved by the said conviction and sentence and he filed an appeal in Kisii High Court Criminal case no 21 of 2014. The decision of the lower court was upheld by the High court and he again moved the court of Appeal in appeal no 20 of 2027 Kisumu. The Appeal was heard, the sentence and conviction were upheld. In upholding the sentence, the court held that the sentence was fully merited.
3. The applicants have now moved this court vide the instant application Kisii seeking a review of the said sentence. The learned prosecutor did oppose the same and urged that court of appeal already dealt with the issue of sentence and thus this court lacks jurisdiction to hear the application.
4. I carefully considered the application herein, the response by the State, the decision in appeal no 21. Of 2010, the decision of Court of Appeal in Criminal appeal no 20 of 2017 filed by the applicants herein and have also seen the re-sentencing guidelines 2023.
5. The said guidelines provide that the resentencing court is the court which last sentenced the convict. Paragraph 4.8.18 of the said guidelines provides that “Resentencing cases shall be handled by the ‘Sentencing Court’ – e.g., if the last court that sentenced the convict was the Court of Appeal, then the resentencing hearing shall also be handled at the Court of Appeal and not a lower court. This applies mutatis mutandis to cases in either superior or inferior courts.”



6. I totally agree with the submissions by the learned prosecution counsel that this court lacks jurisdiction on the matter as the court of appeal has already declared itself on the same. In any event, if the applicants have any issue with the sentencing they ought to move the court of Appeal.
7. The application is struck out for want of jurisdiction.

T.A ODERA

JUDGE

6.3.24

DELIVERED VIRTUALLY VIA TEAM'S PLATFORM IN THE PRESENCE OF;

Applicants in person

Koima for Prosecution

Court Assistant – Oigo

