



**Khaemba v Republic (Miscellaneous Criminal Application
E079 of 2021) [2024] KEHC 3893 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3893 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CRIMINAL APPLICATION E079 OF 2021**

HM NYAGA, J

APRIL 18, 2024

BETWEEN

ROBERT SIMIYU KHAEMBA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant states that he has moved the court for re-sentencing.
2. A brief history of the matter is that the Applicant, with another were charged with the offence of Robbery with Violence, Contrary to Section 296 (2) of the *Penal Code*. Both were convicted and sentenced to death by the Chief Magistrate’s Court at Nakuru.
3. The Applicant filed High Court Criminal Appeal Number 174 of 2003, but the same was dismissed.
4. Undeterred, he filed Criminal Appeal No. 60 of 2005 in the Court of Appeal. The same was also dismissed.
5. Following the decision in *Francis Karioko Muruatetu and Others vs Republic* [2017] eKLR, the Applicant filed High Court Miscellaneous Application Number 242 of 2018.
6. The record shows that the High Court transferred the matter to the Chief Magistrate’s Court at Nakuru, for re-sentencing. It is apparent that the matter was then assigned the number Miscellaneous Criminal Application Number 294 of 2020. Following the further directions in *Francis Karioko Muruatetu and Others vs Republic* [2021] eKLR, the file was sent back to this court for directions.
7. What happened next is unclear but it is apparent that the current file was not initiated by any application. The fate of the earlier application and the one in Chief Magistrate’s Court remained unresolved.



8. At present, this filed does not have any application. It appears to be hinged on the earlier application No. 242 of 2018 which was transferred to the Chief Magistrate's Court and then transferred back to this court.
9. Ideally, once Miscellaneous 242 of 2018 was transferred to the Chief Magistrate's Court, it ought to have been closed, as it was assigned a new number in the Magistrate's court.
10. When the Magistrate's Court made the order for the file to be placed before the Judge for directions, no such directions were ever issued.
11. Therefore, at present there are three (3) files involving the same Applicant.
12. The situation described above is not an isolated one. It has become apparent that the opening of Miscellaneous Criminal Application Files in this court is not regulated or synchronized. There are very many instances where one Applicant is allowed to file multiple applications over the same issue. I have actually come across one where an applicant has filed six (6) applications for re-sentencing.
13. In such cases, it is very possible that one applicant can be heard multiple times by different courts or even the same court, for the same Application. This can lead to an embarrassing situation when different decisions are made over the same application.
14. It is thus important that before any Miscellaneous Application is filed in court, a system is developed to scrutinize and vet it to confirm that there are no previous applications of similar nature have been filed. This is a task that can be undertaken by the court registry on its own or in liaison with the prisons authority. That way, there will be a way of discerning whether an Applicant has been to this court before over the same matter.
15. As regards the present file, I note that it has no application or petition that would enable the court to move. It is also not clear if this file was opened as a result of the directives of the Chief Magistrate's in Miscellaneous 294 of 2020, as no further directions were ever issued by the High Court after the Chief Magistrate asked that the former gives directions.
16. In my view, without a Petition or Application in this particular file, this court is handicapped. It has no basis to act on the matter.
17. That being the case, I find that this court has not been properly moved to make any orders.
18. The applicant is thus advised to move the court afresh, either by way of Petition or Application, so that appropriate orders can be made.
19. Further, the court records show that the Applicant was convicted with the other accused. His fate is unknown. It is likely that he has made a similar application. The status of the other convict is to be established, so as to avoid issuance of two different decisions.
20. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 18TH DAY OF APRIL, 2024.

H. M. NYAGA

JUDGE

In the presence of;

Court Assistant Philip

State counsel Ms Okok



Applicant present

