



**Kimani v Republic (Miscellaneous Criminal Application  
E171 of 2021) [2023] KEHC 170 (KLR) (4 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 170 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
MISCELLANEOUS CRIMINAL APPLICATION E171 OF 2021**

**GL NZIOKA, J**

**JANUARY 4, 2023**

**BETWEEN**

**SAMUEL NDUNG’U KIMANI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. By a chamber summons application filed herein on November 4, 2021, the applicant is seeking for review of the sentence meted against him *vide* Criminal Case No 1442 of 2012, at the Chief Magistrate’s Court at Naivasha. He prays that, the court be pleased to revise the sentence and take into account the provisions of; article 50(2)(p)(q) of the Constitution and section 333(2) of the Criminal Procedure Code. The application is supported by an affidavit sworn by the applicant.
2. The respondent did not file any response to the application. However, I note from the materials placed before the court that, the applicant was arraigned before the Chief Magistrate’s Court charged with the offence of defilement contrary to section 8 (1) as read with section 8 (3) of the Sexual Offences Act and an alternative count of committing an indecent act with a child contrary to; section 11(1) of the said Act. He was subsequently convicted on the main count and sentenced to serve twenty (20) years imprisonment.
3. The applicant avers that, he filed appeal at Naivasha High Court No17 of 2014, that was heard and dismissed in its entirety on May 12, 2017. Be that as it may, there is an indication that, the applicant has filed an appeal at the Court of Appeal, as both the trial and High Court files have been forwarded to that court.
4. In that case, the application herein to review the sentence based on the provision of section 333 (2) of the Criminal Procedure Code is not tenable as this court became *functus officio* upon hearing and determining the appeal.



5. I accordingly strike out the current application for want of jurisdiction and/or dismiss it for being an abuse of court process and/or lack of merit.
6. It is so ordered.

**DATED, DELIVERED AND SIGNED ON THIS 4<sup>TH</sup> DAY OF JANUARY 2023**

**GRACE L NZIOKA**

**JUDGE**

In the presence of:

Applicant in person virtually

Mr. Ndiema for the Respondent

Ms Ogutu-Court Assistant

