



**Muchiri v Republic (Miscellaneous Criminal Application  
E177 of 2021) [2023] KEHC 149 (KLR) (6 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 149 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
MISCELLANEOUS CRIMINAL APPLICATION E177 OF 2021**

**GL NZIOKA, J**

**JANUARY 6, 2023**

**BETWEEN**

**SIMON MBUGUA MUCHIRI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. By a chamber summons application filed in court on February 22, 2022, the applicant is seeking for review of the sentence meted out against him *vide* Senior Principal Magistrate's Criminal Case No 329 of 2020 at Engineer. He prays the sentence be converted to a non-custodial sentence, pursuant to the provisions of; article 50 (2) (p)(q) of the [Constitution](#) of Kenya, and section 333(2) of the [Criminal Procedure Code](#).
2. The application is supported by the affidavit sworn by the applicant where he avers that, he was charged with the offence of trafficking of narcotic drugs contrary to section 4 (a) of the [Narcotic and Psychotropic Substances Control Act](#) No 4 of 1994. He was convicted upon trial and sentenced to pay a fine of; Kshs 100,000.00 in default to serve two (2) years imprisonment.
3. However, the sentence did not take into account the period he was in custody from March 24, 2020 to November 3, 2021, being a period of one (1) year and eight (8) months.
4. The application was served but no response was filed. However, I note from the materials placed before the court that, the charge sheet was registered in court on May 13, 2020, but the applicant was not present in court, though out on cash bail.
5. He appeared in court on May 20, 2020 and was issued with a bond of; Kshs 200,000.00 with one (1) surety with an alternative of cash bail of; Kshs 100,000.00. On June 4, 2020, the cash bail was reduced to; Kshs 100,000.00 with one surety of like amount and cash bail to; Kshs 50,000.00. On July 2, 2020



the surety was approved. By then, the applicant had been in custody for one (1) month thirteen (13) days.

6. On January 30, 2021, warrants of arrest were issued and lifted on the same day. Again, on July 21, 2021, the warrants of arrest issued, extended on July 29, 2021 and lifted on the same day. On November 3, 2021, the applicant was convicted and sentenced as aforesaid. Thus the period in custody herein of one month and thirteen days is negligible.

7. Be that as it were, I note that, the default period imposed herein of two (2) years is unlawful as the provisions of section 28 (2) of the Penal Code provides that: -

(2) In the absence of express provisions in any written law relating thereto, the term of imprisonment or detention under the Detention Camps Act (cap 91) ordered by a court in respect of the non-payment of any sum adjudged to be paid for costs under section 32 or compensation under section 31 or in respect of the non-payment of a fine or of any sum adjudged to be paid under the provisions of any written law shall be such term as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any such case the maximum fixed by the following scale— Amount Maximum period

Not exceeding Sh 500 ----- 14 days

Exceeding Sh 500 but not

exceeding Sh 2,500 -----1 month

Exceeding Sh 2,500 but not exceeding

Sh. 15,000 -----3 months

Exceeding Sh 15,000 but not exceeding

Sh 50,000 -----6 months

Exceeding Sh 50,000-----12 months

8. However, it is noteworthy that, the applicant subsequently appealed against the decision vide High Court Criminal Case No 16 of 2014. The appeal was heard and on September 27, 2018, and dismissed in its entirety.

9. In my considered opinion, once the appeal was heard in this court and a final decision rendered, this court became *functus officio*. The law of *functus officio* thus dictates that, decision-makers; judges, administrative officials, or arbitrators, cannot as a general rule re-open their decisions to correct a mistake. There is no opportunity for them to; “do better next time” in the same case because there will be no next time. They must get it right the first time, for that will be their only time.

10. I therefore find that the court is *functus officio* and strike out the current application.

11. It is so ordered.

**DATED, DELIVERED AND SIGNED ON THIS 6<sup>TH</sup> DAY OF JANUARY 2023**

**GRACE L NZIOKA**

**JUDGE**

**In the presence of:**

Applicant in person

Mr. Ndiema for the Respondent



**Ms Ogutu-Court Assistant**

