



**Ong'era v Republic (Miscellaneous Criminal Application
E067 of 2022) [2023] KEHC 153 (KLR) (4 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 153 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS CRIMINAL APPLICATION E067 OF 2022**

GL NZIOKA, J

JANUARY 4, 2023

BETWEEN

JUSTINE MACHUMA ONG'ERA APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an application for for review of the sentence meted in Criminal
Case No 44 of 2017 at the Chief Magistrate's Court at Naivasha.)*

RULING

1. By an undated chamber summons application filed herein the applicant is seeking for review of the sentence meted against him vide Criminal Case No 44 of 2017, 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 section 333(2) of the [Criminal Procedure Code](#). The application is supported by an affidavit sworn by the applicant
2. The application was served but no response was filed. 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 (2) of the [Sexual Offences Act](#) and an alternative count of committing an indecent act with a child contrary to section 11 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 Naivash High Court No 18 of 2019 that was heard and dismissed. However, the file availed of the High Court Criminal Appeal No E001 of 2020 indicates that, that the applicant withdrew the appeal on conviction, the appeal on sentence was heard and allowed to the extend that, the period of one (1) year two (2) months and twenty-two (22) days, the applicant was in custody was taken into account.



4. In that case, the application to review the sentence based on the provision of section 333 (2) of the *Criminal Procedure Code* has already been dealt with and therefore the court is *functus officio*. 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.

5. It is so ordered.

DATED, DELIVERED AND SIGNED ON THIS 4TH 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

