



**Sitati v Republic (Miscellaneous Criminal Application
E080 of 2022) [2023] KEHC 150 (KLR) (4 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 150 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS CRIMINAL APPLICATION E080 OF 2022**

GL NZIOKA, J

JANUARY 4, 2023

BETWEEN

ROBERT NAKITARE SITATI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. I note that, the applicant herein seeks that, the court do award him a lenient definite sentence as provided for under section 50(2)(p)(q) of the [Constitution](#) and invoke the provisions of section 333(2) of the [Criminal Procedure Code](#) to factor in the period he was in custody while on trial.
2. However, when I called for the trial court file, I learnt that, the subject file being Naivasha Chief Magistrate's Criminal file case no 2877 of 2013 alongside the Naivasha High Court Criminal Appeal case no 6 of 2015 files were forwarded to the Court of Appeal, where the applicant has lodged an appeal. Therefore the only files thereof available are skeleton files. In the given circumstances, the court cannot entertain the application herein for the following reasons
 - a. The High court having dismissed the appeal in its entirety on November 17, 2016 it is *functus officio*.
 - b. There is no record to enable the court re-hear the matter if it were possible
 - c. The applicant has already moved to the court of appeal and cannot run two parallel proceedings over the same subject matter. As such the application is dismissed and/or struck out due to want of jurisdiction.

DATED, DELIVERED AND SIGNED ON THIS 4TH DAY OF JANUARY 2023.

GRACE L NZIOKA

JUDGE



In the presence of;

Applicant present virtually

Mr Ndiema for the Respondent

Ms Ogutu -court assistant

