



**Gichu v Republic (Miscellaneous Criminal Application  
E092 of 2022) [2023] KEHC 1305 (KLR) (1 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1305 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS CRIMINAL APPLICATION E092 OF 2022**

**HK CHEMITEI, J**

**MARCH 1, 2023**

**BETWEEN**

**JOSPHAT KITHINJI GICHU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant on July 15, 2020 was convicted of the offence of robbery with violence contrary to section 296(2) of the penal code as well as rape. He was sentence to 10 years' imprisonment on the two charges and the same were to run concurrently.
2. The applicant it seems did not prefer any appeal but instead filed the undated motion herein seeking that this court invokes the provisions of section 333 of the Criminal Procedure Code and reckon the period he spent in custody as part of the 10 years above.
3. The learned state counsel opposed the application and argued that the sentence was too lenient considering the nature of the offences committed by the applicant.
4. The court has perused the record and it is clear that indeed the offences were heinous and he took advantage of the complainant who was alone and she could not get help. Further it is apparent that the trial court took into consideration the period of 37 months the applicant had spent in custody when meting out the sentence.
5. This court will only interfere if it considers the same to have been excessive in the circumstances or for any other unlawful act that will warrant its interference.
6. For now, the same has not been shown and there is no reason to interfere with the trial's courts finding and sentence. In any case both sentences contrary to the applicant's averments were to run concurrently.



7. The application is otherwise dismissed.

**DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 1<sup>ST</sup> MARCH 2023.**

**H. K. CHEMITEI.**

**JUDGE**

