



**Ngetich v Republic (Miscellaneous Criminal Application  
E100 of 2021) [2023] KEHC 18433 (KLR) (14 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18433 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS CRIMINAL APPLICATION E100 OF 2021**

**HK CHEMITEI, J**

**JUNE 14, 2023**

**BETWEEN**

**KENNEDY NGETICH ALIAS BENARD TIONDO KIPRONO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was convicted and subsequently sentenced to life imprisonment for the offence of defilement by the Children Court in Nakuru. Being aggrieved by the said decision, the applicant appealed to the High Court which confirmed the conviction and the sentence. Thereafter, the applicant filed an appeal to the Court of Appeal and the matter is still pending before the said court.
2. The applicant herein approached this court for re-sentencing vide his application dated August 7, 2020 and this court dismissed the same vide its ruling delivered on February 21, 2022. The applicant has now approach this court with an application seeking to have this court to set aside the orders it issued in the said ruling and restore the applicant's application dated May 24, 2021 seeking re-sentencing.
3. This court takes note that it addressed an application for re-sentencing by the applicant where he relied on the Muruatetu case in it earlier ruling date February 21, 2022. In the said ruling, this court opined that the Muruatetu case was with respect to the death penalty and it only permitted re-sentencing for individuals who had been sentenced to mandatory death sentence without the benefit of mitigation. This court noted that the said case could not apply to the applicant who was sentenced to life imprisonment and his sentence confirmed on appeal in the High court. This court further opined that it had no power to revise the decision of a concurrent High Court Judge or the Court of Appeal. Additionally, this court opined that the only recourse for the applicant was to appeal to the Court of Appeal.



4. In view of the foregoing, this Court having delivered its ruling for re-sentencing vide its ruling of February 21, 2022 became *functus officio* and the applicant should wait the outcome of his case pending before the Court of Appeal.
5. In the premises, the application herein is dismissed.

**DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 14<sup>TH</sup> DAY OF JUNE 2023.**

**H K CHEMITEI**

**JUDGE**

