



**Wanjiru v Republic (Criminal Application E175 of 2024)
[2025] KECA 651 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KECA 651 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E175 OF 2024
W KARANJA, JA
FEBRUARY 21, 2025**

BETWEEN

DOMINIC MAINA WANJIRU APPLICANT

AND

REPUBLIC RESPONDENT

(Being a criminal appeal application seeking leave to appeal out of time pursuant to rule 31 and 42 of the court of appeal rules and any other applicable provisions of the law (M. Odero, J.) in Nyeri HC. Misc Appl. No. E009 of 2022)

RULING

1. Before me is a notice of motion filed by Dominic Maina, the applicant, seeking leave of the Court to appeal out of time citing rules 31 and 42 of the Court of Appeal Rules. In the notice of motion, the applicant says that he was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code in High Court Criminal Case No.32 of 2003, where he was convicted and sentenced to death.
2. He filed an appeal before this Court vide Criminal Appeal No. 4 of 2005 at Nyeri which appeal was dismissed. Thereafter, he filed a Petition for resentencing before the High Court, and the High Court reduced his sentence to 45 years imprisonment vide Criminal Petition No. 2 of 2019. He was not satisfied with that sentence and he moved back to the High Court in Nyeri vide a miscellaneous application for sentence computation but it was dismissed. He says he was directed to file an application/appeal to this Court, hence this notice of motion. He says his appeal has high chances of success.
3. In his affidavit in support of the application, he has repeated the grounds stated above but it is not clear what his appeal or intended appeal entails.



4. I note that the application was not responded to by the State and it is not clear whether the same was served on the Office of the D.P.P. or not.
5. Be that as it may, I have looked at the notice of motion, the grounds on its face along with the supporting affidavit and I'm not quite clear on what the appellant seeks leave to appeal against. I note that this Court dealt with this appeal with finality and dismissed it the applicant went back to the High Court where he was resented, and it is not clear whether he is appealing against that sentence or whether he wants to appeal on his miscellaneous application which was dismissed. Whichever way one may want to look at it or whatever orders he seeks to appeal against, it is clear to me that this Court is functus officio and is bereft of jurisdiction to entertain any issues arising from that appeal, and I'm also in doubt as to whether any appeal lies before this Court from the decision of the High Court dismissing the miscellaneous application where the appellant sought re-computation of this sentence.
6. Furthermore, the ruling of the learned Judge dismissing the miscellaneous application has not been attached to this notice of motion and I cannot give any orders in vacuo. I am not clear, whatsoever, on what this application is about. It is not predicated on any law or any rules of this Court. I find no merit in the same and I dismiss it accordingly.

DATED AND DELIVERED AT NYERI THIS 21ST DAY OF FEBRUARY 2025.

W. KARANJA

JUDGE OF APPEAL

I certify that this is a the true copy of the original.

Signed

DEPUTY REGISTRAR

