



**Ngugi v Republic (Criminal Application E139 of 2024)
[2024] KECA 1640 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1640 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E139 OF 2024
PM GACHOKA, JA
NOVEMBER 15, 2024**

BETWEEN

JAMES MUNGAU NGUGI APPLICANT

AND

REPUBLIC RESPONDENT

(An application to restore Nakuru Civil Appeal no. 10 of 2019 arising out of the conviction and sentence from the judgment of the High Court of Kenya at Nakuru (Mativo, J.) delivered on 2nd August 2018 in HCCRA No. 199 of 2011)

RULING

1. In his undated Notice of Motion, the applicant seeks to reinstate Nakuru Civil Appeal no. 10 of 2019 appealing against the conviction and sentence of the High Court sitting at Nakuru in HCCRA No. 199 of 2011. The applicant was charged in Nakuru CM (SO) no. 50 of 2011 with the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the *Sexual Offences Act*. After full trial, the applicant was convicted and sentenced to life imprisonment. His appeal against that conviction and sentence was dismissed by Mativo, J. (as he then was) on 2nd August 2018. Dissatisfied, the applicant filed Nakuru Civil Appeal no. 10 of 2019. However, he withdrew the appeal in order to pursue an application for resentencing before the High Court.
2. The applicant has thus filed the application before me. It is supported by his undated supporting affidavit and his memorandum of appeal. He urged this Court to allow the application as it was in the interest of justice.
3. The application was canvassed by way of written submissions. A cursory perusal of the applicant's undated written submissions dated argue on the substantive appeal. The respondent filed its written submissions dated 31st October 2024. Learned Senior Assistant Director of Public Prosecutions Mr. Omutelema pointed out that following the dismissal of his appeal before the High Court, the applicant



filed Nakuru Misc. Criminal Application no. E013 of 2020 and Nakuru Misc. Criminal Application no. E058 of 2022 seeking resentencing. Both applications were heard and dismissed on 19th January 2022 and 24th February 2023 respectively. The respondent submitted that taking into account rule 70 (3) of the [Court of Appeal Rules 2022](#) and the applicant's sentence being excessive, the application was meritorious. Learned counsel urged this Court to allow the prayer for restoration of appeal and extend time to appeal out of time as it is within this Court's discretion.

4. In this application, the applicant seeks to restore Nakuru Civil Appeal no. 10 of 2019 that was abandoned in lieu of two applications for resentencing. Rule 70 (3) of the [Court of Appeal Rules 2022](#) provides as follows:

“An appeal which has been withdrawn under sub- rule (1) may be restored by leave of the Court on the application of the appellant if the Court is satisfied that the notice of withdrawal was induced by fraud or mistake and that the interests of justice require that the appeal be heard.”

5. The appellant seeks to restore Nakuru Civil Appeal no. 10 of 2019 that he had withdrawn in favor of hearing of the resentencing applications. Following their dismissals and directions from the High Court that the applicant ought to pursue an appeal instead, the applicant is now before this Court. However, this is not an application that ought to be heard by a single judge by dint of the provisions set out in rule 55 (2) (d) of the [Court of Appeal Rules 2022](#). I therefore direct that it be listed before a full bench for consideration at the earliest opportune moment.

DATED AND DELIVERED AT NAKURU THIS 15TH DAY OF NOVEMBER 2024.

M. GACHOKA C.Arb, FCIArb.

.....

JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

