



**Wangechi & another v Republic (Criminal Appeal 120 of 2014)
[2023] KECA 125 (KLR) (10 February 2023) (Judgment)**

Neutral citation: [2023] KECA 125 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPEAL 120 OF 2014
FA OCHIENG, LA ACHODE & WK KORIR, JJA
FEBRUARY 10, 2023**

BETWEEN

SAMUEL MATHENGE WANGECHI 1ST APPELLANT

ANTHONY MAINA CHARLES 2ND APPELLANT

AND

REPUBLIC RESPONDENT

(An appeal from the judgment of the High Court of Kenya at Nakuru (A. Emukule & L. Waithaka, JJ.) delivered on 13th March, 2014 in HC.CR. A. No. 351 of 2009)

JUDGMENT

1. The appellants, Samuel Mathenge Wangechi and Anthony Maina Charles were convicted for the offences of Gang Rape contrary to Section 10 of the [Sexual Offences Act](#); and Robbery with Violence contrary to Section 296(2) of the [Penal Code](#).
2. For the offence of gang rape, each of the appellants was sentenced to 15 years imprisonment; whilst for the offence of robbery with violence they were each sentenced to suffer death as by law prescribed.
3. After giving consideration to their first appeal, the High Court upheld the convictions on both counts. The learned High Court Judge also upheld the sentence of 15 years imprisonment for the offence of gang rape.
4. However, for the offence of robbery with violence, the High Court set aside the death penalty, and substituted it with a sentence of 20 years imprisonment.
5. By the time the appeal herein came up for hearing before us, the 2nd appellant Anthony Maina Charles had already been released from prison custody. His said release came after the High Court allowed his application for review, being Misc. Application No. 35 of 2020, at the Nyahururu High Court.



- 6. Upon determining the application for review, the High Court reduced the sentence to 10 years imprisonment.
- 7. Thereafter, when the prison authorities computed the period which the 2nd appellant should serve the sentence (as reviewed), they granted him freedom on 1st July, 2020. In the circumstances, the appeal of the 2nd appellant had abated.
- 8. As regards the 1st appellant, Samuel Mathenge Wangechi, he told this Court that he was no longer interested in prosecuting the appeal against both the conviction and the sentence. His only request was that the court should direct the prison authorities to take into account the period which he had spent in custody, whilst he was still on trial.
- 9. Pursuant to the provisions of Section 333(2) of the *Criminal Procedure Code*, where a person is sentenced to imprisonment, if he had been held in custody prior to such imprisonment, the period already spent in custody should be taken into account.
- 10. We have had a close look at the record of the proceedings. The appellants were first taken to court on 8th April, 2009.
- 11. The trial went on until 13th November 2009, when the learned trial Magistrate convicted the appellants. During the duration of the trial, the appellants remained in custody. The sentences were handed down by the trial court on 10th December 2009.
- 12. In effect, the appellants were in custody for 8 months and 2 days, prior to conviction. Pursuant to the provisions of Section 333(2) of the *Criminal Procedure Code*, we order that when computing the period during which the 1st appellant should serve the sentence, the prison authorities will take into account the period which the said appellant had already spent in custody prior to his conviction and sentence.
- 13. Meanwhile, the appeal of the 2nd appellant is marked as abated, pursuant to Rule 73(6) of the *Court of Appeal Rules*.

DATED AND DELIVERED AT NAKURU THIS 10TH DAY OF FEBRUARY, 2023.

F. OCHIENG

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JUDGE OF APPEAL

L. ACHODE

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JUDGE OF APPEAL

W. KORIR

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

