



**Wanjuri v Republic (Miscellaneous Criminal Application
E027 of 2023) [2024] KEHC 2899 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2899 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CRIMINAL APPLICATION E027 OF 2023**

**HI ONG'UDI, J
MARCH 20, 2024**

BETWEEN

MARY WAMBUI WANJURI APPLICANT

AND

REPUBLIC RESPONDENT

*(Arising from the Judgment delivered by Justice Chemitei in Nakuru
High Court Criminal Appeal No. 41 of 2019 on 10th March, 2022)*

RULING

1. The applicant Mary Wambui Wanjiru was charged and convicted on count 1 for the offence of robbery with violence contrary to section 296 (2) of the *Penal Code* and on count II for the offence of Gang rape contrary to section 10 of the *Sexual Offences Act* No. 3 of 2006, in Nakuru CM's Criminal Case No. 2167 of 2018. On 16th May 2019 she was sentenced to death on count I and 20-years imprisonment on count II. She appealed the lower court's decision vide Nakuru High Court Criminal Appeal No 41 of 2019 and in a Judgment, dated 10th March, 2022 this court substituted the death sentence with a custodial sentence of 20 years and upheld the sentence on count II. Both sentences were to run concurrently.
2. She filed the instant application on 19th January 2023 seeking a review of the sentence imposed on both counts. The application was supported by her affidavit of even date. She deposed that her appeal to the Court of Appeal was never done as a result of her being satisfied with the sentences imposed by the appellate court. She cited the Court of Appeal decision in Benard Mulwa Musyoka Vs Republic Criminal Appeal no. 25 of 2016 where the said court affirmed that the supreme court did not prohibit courts below it from ordering sentence rehearing in any in any matter pending before those courts.
3. She deposed further that this court had jurisdiction under article 165(3)(b) of *the constitution* of Kenya 2010 to hear and determine this matter. She urged the court to waive the costs of the application.



4. The respondent filed a replying affidavit dated 25th February 2024 sworn by Edwin Konga, the prosecution counsel. He averred that this court could not overrule the decision of another court with similar jurisdiction. He averred further that the applicant herein should have filed an appeal with the superior court so that the issue of sentencing could be relooked at if she was dissatisfied with the sentence meted out by the high court. He added that the prayer for re-sentencing sought by the applicant could not be granted and therefore the same should be dismissed.
5. I have perused the record herein. This court heard the Applicant's Appeal No. 41 of 2019 and delivered its Judgment on 10th March, 2024 partially allowing the Appeal. From the application filed herein it is clear that the Applicant was not satisfied with the Judgment of 10th March, 2022. The court that delivered the Judgment is one of equal status with the one sitting. There is no error apparent on the face of the record which would make this court interfere with the said Judgment by way of review. Let the applicant move to the Court of Appeal to challenge the Judgment delivered by Chemitei J on 10th March, 2022.
6. The undated application filed on 19th January, 2023 lacks merit and is hereby dismissed.
7. Orders accordingly

DELIVERED, DATED AND SIGNED THIS 20TH DAY OF MARCH, 2024 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

