



REPUBLIC OF KENYA



KENYA LAW
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Adiya v Republic (Petition E018 of 2024)
[2024] KEHC 16480 (KLR) (27 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16480 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
PETITION E018 OF 2024
DR KAVEDZA, J
DECEMBER 27, 2024

BETWEEN

LEVIS MABARE ADIYA PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The petitioner was charged and after a full trial convicted for the offence of defilement contrary to section 8(1) as read with 8(2) of the *Sexual Offences Act*, No. 3 of 2006. He was sentenced to serve life imprisonment. He filed an appeal before the High Court sitting at *Milimani vide Criminal Appeal No. 85 of 2017*. His appeal was partially allowed and the sentence reduced to thirty (30) years imprisonment. A subsequent appeal to the Court of Appeal was dismissed. A subsequent application for resentencing before this court was dismissed vide Criminal Revision No. 34 of 2024.
2. He has filed the present petition dated 17th December 2024 praying that he be given a further opportunity to mitigate for a more lenient sentence.
3. I have considered the petition, the supporting affidavit and the applicable law. The issue for consideration is whether this court has jurisdiction to determine the Petition in issue.
4. It is trite law that the jurisdiction of courts in Kenya is always conferred by *the Constitution* or other written laws and a court of law cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. The jurisdiction of the High Court includes; unlimited original jurisdiction in criminal and civil matters; jurisdiction to enforce the bill of rights; appellate jurisdiction; interpretative jurisdiction; any other jurisdiction, original or appellate, conferred on it by legislation; and supervisory jurisdiction.
5. From the record, the petitioner is serving a sentence imposed by the magistrates' court, reduced by the High Court, and confirmed by the Court of Appeal.



6. In the case of Raila Odinga & 2 Others –vs- Independent Electoral & Boundaries Commission & 3 Others [2013] eKLR the Court stated that: -

“A court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors nor does it prevent a judicial change of mind even when a decision has been communicated to the parties. Proceedings are only fully concluded, and the court functus, when its judgment or order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are finally concluded, the court cannot review or alter its decision; any challenge to its ruling or adjudication must be taken to a higher court if that right is available.”

7. Further, in the case of Joseph Maburu alias Ayub –vs- Republic [2019] eKLR, where the learned Judge stated that: -

“Sentencing is a judicial exercise. Once a Judge or a judicial officer has pronounced a sentence, he/she becomes functus officio. If the sentence is illegal or inappropriate the only court which can address it is the appellate one. Black’s Law Dictionary Tenth (10th) Edition describes defines sentence as: The Judgement that a court formally pronounces after finding a criminal Defendant guilty; the punishment imposed on a criminal wrongdoer. Remitting a matter to the trial court which had become functus officio after sentencing flies in the face of the doctrine of functus officio. It amounts to asking the trial court to clothe itself with the jurisdiction of an appellate court. This is an illegality.”

8. The rule of thumb is that superior courts cannot sit on review/appeal over decisions of their peers of equal and competent jurisdiction, much less those courts higher than themselves. The sentence which the Petitioner wishes to have reviewed was imposed by the Magistrate Court and on appeal to the High Court was reduced to Thirty (30) years, which was affirmed by the Court of Appeal. It is my view that the only instance that this court can review a sentence is when such a sentence is imposed by a subordinate court pursuant to the provisions of section 362 of the Criminal procedure Code (Cap 75) Laws of Kenya.

9. In the upshot, this court is functus officio and hence bereft of jurisdiction to review the sentence. Accordingly, the petition dated 17th December 2024 lacks merit and is dismissed.

It is so ordered.

RULING DATED AND DELIVERED THIS 27TH DAY OF DECEMBER 2024

D. KAVEDZA

JUDGE

