



**Gathonjia v Republic (Miscellaneous Criminal Application  
E060 of 2022) [2023] KEHC 22058 (KLR) (29 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 22058 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
MISCELLANEOUS CRIMINAL APPLICATION E060 OF 2022**

**GL NZIOKA, J  
AUGUST 29, 2023**

**BETWEEN**

**HIRAM MWANGI GATHONJIA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant filed a chamber summons application on August 19, 2022 seeking for review of his sentence meted out against him in criminal case No 1698 of 2011 at the Chief Magistrate’s Court at Naivasha.
2. He relies on his supporting affidavit and a document titled “application” wherein he avers that he was charged with the offence of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act* No 3 of 2006, Laws of Kenya. That the case was fully heard and he was convicted and sentenced to life imprisonment. That, he filed an appeal to the High Court at Nakuru vide High Court criminal appeal 44 of 2014 which was heard and dismissed. Subsequently, he filed a second appeal to the Court of Appeal in Kisumu, however, it has never been heard.
3. That, this court is seized with competent jurisdiction under Article 165 (3) (b) of the *Constitution* of Kenya, 2010 to hear this matter. He also seeks for a lenient sentence under Article 50(2)(p)(q) and that the court considers the time he spent in remand under section 333(2) of the *Criminal Procedure Code* (Cap 75) Laws of Kenya.
4. The respondent never failed a response to the application despite being given an opportunity to do so.
5. I have considered the application and find that, as the applicant has already canvassed the subject matter herein vide High Court criminal case No 44 of 2014 at Nakuru, where judgment was entered on May 16, 2014 and the appeal dismissed in its entirety, this court is functus officio.



6. It is noteworthy that this court in the case of; *Lucy Wangari Mubia v Republic* [2022] eKLR stated as follows on the doctrine of *functus officio*:

15. *Functus officio* is a latin expression that translates to; “having performed his or her office.” According to Ulpian, after a judge has delivered his judgment, he immediately ceases to be the judge:

“hoc jure utimur ut judex qui semel vel pluris vel minoris condemnavit, amplius corrigere sententiam suam non posset; semel enim male vel bene officio functus est.” (see Alexandr Koptev, “Digestae Justinian” The Latin Library at Book 42, Title 1, Note 55, online:

The gist of Ulpian’s words is: “[A] judge who has given judgment, either in a greater or a smaller amount, no longer has the capacity to correct the judgment because, for better or for worse, he will have discharged his duty once and for all.” (see Translation in Daniel Malan Pretorius, “The Origins of the *Functus Officio* Doctrine, with Specific Reference to Its Application in Administrative Law” (2005) 122:4 SALJ 832 at 836).

16. The law of *functus officio* thus dictates that, decision-makers; judges, administrative officials, or arbitrators, cannot as a general rule re-open their decisions to correct a mistake. There is no opportunity for them to; “do better next time” in the same case because there will be no next time. They must get it right the first time, for that will be their only time.

17. This is contrary to the Lyrics to the song; “Mistake” from the popular children’s cartoon Shimmer and Shine enlighten:

“When we make a big mistake.

Don’t fret, let’s celebrate

Cause we’ll get another try (Oh yeah)

We’ll do better next time”.

7. Furthermore, the court being *functus officio* does not have jurisdiction to hear this matter. In the given circumstances, the application herein is not tenable and it is struck out for want of jurisdiction.

8. It is so ordered.

**DATED, DELIVERED AND SIGNED THIS 29<sup>TH</sup> DAY OF AUGUST 2023.**

**GRACE L. NZIOKA**

**JUDGE**

**In presence of:**

The applicant present virtually

Mr. Ndiema for the respondent

Ms Ogutu: court assistant

