



**Mwaura v Republic (Miscellaneous Criminal Application
E005 of 2022) [2023] KEHC 22057 (KLR) (29 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 22057 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS CRIMINAL APPLICATION E005 OF 2022
GL NZIOKA, J
AUGUST 29, 2023**

BETWEEN

DENNIS KARANJA MWAURA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant filed a chamber summons application on January 28, 2022 seeking for review of his sentence meted out against him in criminal case No 216 of 2011 at the Senior Principal 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(3) 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 twenty (20) years imprisonment. That, he filed an appeal to the High Court at Nakuru vide High Court Criminal Appeal No 184 of 2014 which was heard and dismissed and conviction and sentence affirmed.
3. That, this court is seized with competent jurisdiction under Article 165 (3) (b) of *the Constitution of Kenya, 2010* to hear and determine this matter. He also seeks for a lenient sentence under Article 50(2)(p)(q). Further that the court considers the time he spent in remand under section 333(2) of the *Criminal Procedure Code* (Cap 75) Laws of Kenya. He relies on the case of *Vincent Sila Jona & 87 others vs Republic* Petition No 15 of 2020.
4. The respondent did not file any 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 vide High Court Criminal Case No 184 of 2011 at Nakuru, and judgment entered on May 3, 2013, wherein the court dismissed the appeal in its entirety, this court is functus officio.



6. As stated by this court in the case of; *Lucy Wangari Mubia v Republic* [2022] eKLR functus officio doctrine is;

“ 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. In the given circumstances, this court has no jurisdiction to hear this matter, 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 29TH DAY OF AUGUST 2023.

GRACE L. NZIOKA

JUDGE

In presence of:

The applicant present virtually

Mr. Ndiema for the respondent

Ms Ogutu: court assistant

