



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**HIGH COURT MISCELLANEOUS CRIMINAL APPLICATION NO. E250 OF 2021**

**JUSTUS KILONZO MUNYWOKI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. On 23<sup>rd</sup> July 2021, the applicant filed an undated chamber summons application, under certificate of urgency. The application is not premised on any provisions of the law, and neither are the prayers in the same quite clear. However, the prayers are as verbatim reproduced here below:

- a) *That, the Honourable court be pleased to hear and determine the application;*
- b) *That the Honourable court pursuant to the Vincent Sila Jona and 87 others (supra) and by the orders granted by the Hon. Judge, enforce the said law and cure the violation;*
- c) *That, the Honourable court upholds the law by granting the applicant what is legally deserved and in the objectivity of sentencing by ensuring that he serves an appropriate Sentence.*
- d) *That, the application is in the interest of Justice through the Constitution and other laid down laws.*
- e) *That, the applicant be present during the hearing and ruling of the application*

2. I also note that, the applicant filed another document entitled “Application” premised on the provisions of; section 338 (2) of the Criminal Procedure Code and section 38 of the Penal Code, wherein he prays as follows:

- a) *That, the court considers that he has been in prison since 27<sup>th</sup> November 2018 and orders that his sentence starts then;*
- b) *That, the court exercises its review jurisdiction and reviews his sentence accordingly;*
- c) *That, as the court makes a determination, to take into account any mitigating factors beforehand and to give him the appropriate reprieve;*
- d) *That, the court may grant any other orders that it may deem appropriate in the circumstances.*

3. The subject application herein was served and despite the Respondent being given fourteen (14) days to file a response, none is on the court file at the time of writing this ruling. In the same vein, the parties were given time to file submissions and again, none are on the court file as of now.

4. Be that as it may, I find that, basically, what the applicant is seeking for, is review of the orders given in relation to criminal case number; 3403 of 2014, at the Chief Magistrate’s Court at Makadara. That, the court do take into account, the period he was in custody, while computing the sentence he should serve.

5. However, the background facts of the matter reveal that, the applicant was charged vide the subject criminal case number, 3403 of 2014 with the offences of:

a) Robbery with violence contrary to section 295 as read with section 296 (2) of the Penal Code in 1<sup>st</sup> count 1

b) Gang rape contrary to section 10 of the Sexual Offence Act No. 3 of 2006 in the 2<sup>nd</sup> count and,

c) Committing and indecent act with an adult contrary to section 11(a) of the Sexual Offences Act No. 3 of 2006, in the alternative count.

6. He was found guilty at the conclusion of the hearing of the case,

and convicted accordingly on the 1<sup>st</sup> and 2<sup>nd</sup> Count, under; section 215 of the Criminal Procedure Code. He was then sentenced to serve fifteen (15) years imprisonment, on the 1<sup>st</sup> count and ten (10) years imprisonment, on the 2<sup>nd</sup> count. The sentence was ordered to run concurrently.

7. However, the applicant was aggrieved by the conviction and sentence and lodged an appeal vide HCCRA No. 59 of 2019. The appeal was heard by; Hon. Lady Justice Ngenye Macharia and dismissed it in its entirety, vide a judgment delivered on 2<sup>nd</sup> March, 2020. Thereafter, the applicant filed the subject application.

8. I have considered the application and I find that, first and foremost, the High Court having pronounced itself on the matter, on appellate level, the court has become *functus officio*. The *functus officio* doctrine, is one of the mechanisms by means of which the law gives expression to the principle of finality. That, once such a decision has been given, it is (subject to any right of appeal to a superior body or functionary) final and conclusive, as stated in the “Application in Administrative Law,” (2005) 122 SALJ 832.

9. Further, in the Journal by the University of Queensland, on “The Finality of Judicial Decisions”, it is stated that, a court becomes *functus officio* in the following events;

a) A judicial tribunal, becomes *functus officio* in respect of decisions made by it before it becomes defunct;

b) The judicial tribunal's powers to revise its own decisions or to re-try any case after decisions made by it in the original trial have been rescinded.

10. In the same vein, the Court of Appeal in the case of; Telkom Kenya Limited vs John Ochanda [2014] eKLR, stated that:

“*Functus officio* is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon...

*The doctrine is not to be understood to bar any engagement by a court with a case that it has already decided or pronounced itself on. What it does bar; is a merit-based decisional re-engagement with the case once final judgment has been entered and a decree thereon issued.”*

11. Thus, on that ground of *functus officio*, the court has no jurisdiction to deal with this matter. However, even if the court were to consider the application on merit, I find that, the High Court, having dismissed the appeal in its entirety, then, the issue of this court reviewing the sentence does not arise. The court herein can only review its own orders or sentence imposed. No sentence was meted out by it.

12. Furthermore, the provision of section 333(2) of Criminal Procedure Code, gives power only for the court passing the sentence, to consider the period, an accused may have been in custody. Finally, the provisions of section 362 as read together with section 364 of Criminal Procedure Code, empowers the court to review the orders of subordinate courts, not its own, after final orders are given.

13. In conclusion, I find that, the application has no merit and/or the court has no jurisdiction to entertain it and I dismiss it accordingly.

**DATED, DELIVERED VIRTUALLY AND SIGNED ON THIS 14TH DAY OF JANUARY 2022.**

**GRACE L. NZIOKA**

**JUDGE**

In the presence of:

Applicant present in person

Ms Akunja for the Respondent

Edwin Ombuna - Court Assistant