



REPUBLIC OF KENYA



KENYA LAW
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**Korir v Republic (Petition E069 of 2021)
[2022] KEHC 16869 (KLR) (23 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16869 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PETITION E069 OF 2021
RN NYAKUNDI, J
DECEMBER 23, 2022**

BETWEEN

JOSEPH KORIR ALIAS DAVID ARAP CHONJO PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant, Joseph Korir alias David Arap Chonjo, brought the instant application wherein he seeks sentence review. It is his case that he was charged and convicted of the offence of robbery with violence contrary to section 296(2) of the *Penal Code* in Eldoret Chief Magistrate's Court Criminal Case No 3971 of 2018 and sentenced to life imprisonment. That he appealed to this Court vide Eldoret High Court Criminal Appeal No 157 of 2019 where this Court set aside the sentence of life imprisonment and in its place sentenced the Applicant to (25) years imprisonment.
2. In the affidavit in support of the motion, the Applicant deposed that he is remorseful, reformed and rehabilitated and has since learnt his lesson having undergone various rehabilitation programmes. The Applicant further deposed that he is sickly with underlying health conditions and fears contacting Covid-19. Applicant maintains that he is a young man who needs to be reintegrated back into society.

Determination

3. The only issue for determination is whether this Court has the requisite jurisdiction to resentence the Applicant herein.
4. In the present application, the Applicant was charged with the offence of violence contrary to section 296(2) of the *Penal Code* in Eldoret Chief Magistrate's Court Criminal Case No 3971 of 2018 and sentenced to life imprisonment. That he appealed to this Court vide Eldoret High Court Criminal Appeal No 157 of 2019 and which appeal where this Court set aside the life imprisonment and its place sentenced the Petitioner to (25) years imprisonment.



5. The sentence which the Applicant wishes to have reviewed was passed by this court. As such the Applicant is basically seeking that this court to review its own decision regarding sentence of fifteen (25) years imprisonment. The moment the matter was heard and determined by the High court, the court became 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.
6. In the case of *Joseph Maburu alias Ayub v Republic* [2019] eKLR 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. The Black’s Law Dictionary Tenth (10th) Edition describes defines sentence as: The judgment 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.”
7. In the upshot, this Court is functus officio and hence bereft of jurisdiction review the sentence as this Court heard and determined Appeal No 157 of 2019 and consequently set aside conviction and sentence of life imprisonment and in its place sentenced the Applicant to (25) years imprisonment. The Petitioner has failed to discharge the burden of proof on the criteria for review of sentence of a convict outlined under article 50 (6) (a) and (b) of the *Constitution*. However, the only remedy available to the petitioner is the one provided under section 333(2) of the *Criminal Procedure Code* in so far as credit of sentence on the period spent in remand custody is concerned. The applicable sentence shall therefore commence on the date of arrest of the petitioner. To that extent the warrant of committal be and is hereby amended to reflect the new order.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET VIA EMAIL THIS 23RD DAY OF DECEMBER, 2022

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R. NYAKUNDI
JUDGE

