REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT HOMA BAY

MISCELLANEOUS CRIMINAL APPLICATION NO. 8 OF 2020

EMMANUEL OCHIENG OWUONDO...........1ST APPLICANT

ISAAC NDIRA OSORE....................................2ND APPLICANT

VERSUS

THE REPUBLIC...RESPONDENT

RULING

1. Emmanuel Ochieng Owundo and Isaac Ndira Osore, the petitioners herein, were convicted for the offence of being in possessions of Narcotic Drugs contrary to section 3 (2) of the Narcotic Drugs and Psychotropic Substances Act. They were found guilty and upon conviction were sentenced to life imprisonment. When they appealed to the High Court, their appeal was dismissed. However, when they appealed to the Court of appeal, their sentence was reduced and were ordered to serve ten years imprisonment. Apparently the applicants were not satisfied with the sentence. They have brought the present application seeking the court to interfere with the sentence meted by the Court of Appeal.

2. The applicants were in person and relied on the decision of the Supreme Court in the case of Francis **Karioko Muruatetu & Another vs. Republic [2017] eKLR**.

3. The respondent opposed the application and contended that the interference with the sentence by the Court of Appeal would amount to undermining the authority of that Court.

4. When this court (differently constituted) delivered itself on appeal, it ceased to have jurisdiction and *functus officio*. In **Raila Odinga & 2 Others vs. Independent Electoral & Boundaries Commission & 3 Others [2013] EKLR** the Supreme Court cited with approval an excerpt from an article by Daniel Malan Pretorius entitled, **"The Origins of the Functus Officio Doctrine, with Special Reference to its Application in Administrative Law" (2005) 122 SALJ 832** which reads:

> **...The *functus officio* doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision making powers may, as a general rule, exercise those powers only once in relation to the same matter...The [principle] is that once such a decision has been given, it is (subject to any right of appeal to superior body or functionary) final and conclusive. Such a decision cannot be reviewed or varied by the decision maker.**

At paragraph 19 in the Raila Case (Supra) the Court further stated:

> **This principle has been aptly summarized further in Jersey Evening Post Limited v. A1 Thani [2002] JLR 542 at 550:**
>
> **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 on adjudication must be taken to a higher court if that right is available.**

5. I have stated before that sentencing is a judicial exercise. Once 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 judgment that a court formally pronounces after finding a criminal defendant guilty; the punishment imposed on a criminal wrongdoer.**

6. If the applicants were dissatisfied with the decision by the Court of Appeal, the only option was to move to the Supreme Court. Just like in water where there is a non-return valve, they can only move upwards. Their application is therefore dismissed.

DELIVERED and **SIGNED** at **HOMA BAY this** 26th **day** of May**, 2021**

KIARIE WAWERU KIARIE

JUDGE