

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION - MILIMANI COURT

CRIMINAL REVISION NO. 207 OF 2019

JOSEPH IRUNGU KIBE.....APPLICANT

VERSES

REPUBLIC.....RESPONDENT

RULING

1. **Joseph Irungu Kibe**, the Applicant, approached this court seeking review of the sentence meted out following the offence he committed. In the affidavit in support of the application he deposes that he was tried and convicted for the offence of possession of a firearm and breaking into a building and committing a felony, whereby he was sentenced to serve 7 years imprisonment, and 1 year, 6 months respectively. He expressed remorse and called upon the court to take into account the time he spent in remand custody, namely 2 years, 8 months and consider ordering him to serve a non- custodial sentence.

2. The Respondent did not file a response to the Application.

3. The Application was canvassed through oral submissions. The applicant sought review of sentence. Ms. Ndombi, learned State Counsel pointed out that a similar application had been determined by Kimaru J. a fact admitted by the Applicant.

4. I have perused a Ruling delivered on 21st June, 2018 by Kimaru J. for review of the sentence alluded to herein. The learned Judge was of the view that the trial court in reaching its decision took into consideration the period that the Applicant was held in remand custody. Consequently, the Application was dismissed for lack of merit.

5. The application for review of sentence having been considered by Kimaru J. who presided over a court of concurrent jurisdiction with this court, his order finally determined the matter, therefore, this court is functus officio.

6. The Supreme Court expounding on the doctrine of functus officio in Election ***Petitions Nos. 3, 4 & 5 Raila Odinga & Others vs. IEBC & Others [2013] eKLR*** citing with approval an excerpt from an article by Daniel Malan Pretorius, in “The Origins of the functus officio Doctrine, with Specific Reference to its Application in Administrative Law,” (2005) 122 SALJ 832 stated thus: -