

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

Coram: D. K. Kemei - J

MISCELLANEOUS CRIMINAL APPL.NO. 55 OF 2020

MOHAMMED IDD KIOKO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON RE-SENTENCING

1. Mohammed Idd Kioko, the Applicant herein was charged with an offence of defilement contrary to section 8(1) as read with section 8(2) of the Sexual Offences Act.
2. The Applicant pleaded not guilty and the case proceeded to full hearing. He was convicted of the main count and sentenced to serve life imprisonment.
3. The Applicant was aggrieved by that decision and filed an appeal to the High Court against both the conviction and sentence. The appeal was duly heard. A judgment was delivered on 24.7.2018 by this court. The appeal was dismissed and the conviction and sentence was upheld.
4. The Applicant did file a notice of appeal on 4.9.2018 with intention to file a 2nd appeal against the decision of the High Court to the Court of Appeal. In addition, the applicant did file a new Application before this court in which he seeks resentencing pursuant to the decision in **Francis Karioko Muruatetu & Another v R (2017) eKLR**
5. From the import of the functus officio doctrine this court cannot consider the application for resentencing.
6. Once a court becomes functus officio, the only orders it can grant are review orders which are an exception to the functus officio doctrine. The Supreme Court in **Raila Odinga & 2 Others v Independent Electoral & Boundaries Commission & 3 others [2013] eKLR** stated that:

“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 or adjudication must be taken to a higher court if that right is available.”

7. Most importantly the matter is already in the Court of Appeal and handling the application on its merits would be tantamount to concurrent handling of the same matter in two different courts and a disregard for the hierarchy of courts. There is no known law that affords this court with the jurisdiction to supervise a superior court. In this regard the applicant’s application ought to be directed to the Court of Appeal where his appeal is pending consideration. The applicant having exhausted his appeal before this court and proceeding to prefer an appeal to the Court of Appeal is barred by the doctrine of functus officio as this court is no longer seized with jurisdiction to handle the matter. The applicant should now proceed to the appellate court for redress where his appeal is pending determination.
8. The upshot of the foregoing observations is that the Applicant’s application filed on 5.6.2020. lacks merit. The same is dismissed.

It is so ordered.

Dated and delivered at Machakos this 29th day of October, 2020.

D. K. Kemei

Judge