

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

Coram: D. K. Kemei - J

MISCELLANEOUS CRIMINAL APPL. NO. 114 OF 2019

MICHAEL KYALO MUNYAO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON RESENTENSING

1. Michael Kyalo Munyao, the Applicant herein was charged with 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 that the trial court sentenced him 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 judgement was delivered on 29.11.2018 by this court. The judgement dismissed the appeal and upheld both the conviction and sentence.
4. The Applicant did file a notice of appeal on 18.12.2018 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 review of sentence pursuant to the decision in **Evans Wanjala Wanyonyi (2019) eKLR** and **Francis Karioko Muruatetu & Another v R (2017) eKLR**
5. From the import of the functus officio doctrine the applicant is not entitled to 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. Because the matter is already in the Court of appeal and handling the application on its merits would be tantamount to concurrent consideration of the same matter in two different courts and a disregard for the hierarchy of courts. This court has no 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.
8. The upshot is that the applicant’s application filed on 31.7.2019 seeking for resentencing lacks merit. The same is dismissed.

It is so ordered.

Dated and delivered at Machakos this 27th day of October, 2020.

D. K. Kemei

Judge