



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL REVISION CASE NO. 181 OF 2020

LESIT, J

JEREMIAH MWITA RANGE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being a Review of the Re-sentencing by Hon. Luka Kimaru, J made on 13th March 2019)

RULING

1. The Applicant, **JEREMIAH MWITA RANGE** has approached this court vide a Chamber Summons application filed 26/6/19. It is brought under **Article 50(2)(q)** of the **Constitution** and all enabling provisions of the Law. He seeks 3 orders namely:

1. That the court be pleased to hear and determine this application for review of the imposed sentence.

2. That this Hon. Court be pleased to make an order to vary the meted sentence on account of a critical medical condition and discount time spent in remand in pursuant to section 333 (2) of the Criminal Procedure Code and section 35 of the Penal Code.

3. That the court be pleased to make any other order which it deems as fit and just.

2. The application is supported by what he terms as prayers namely:

1. The applicant urges the court to review the meted sentence and put into account the applicant spent a period of 9 months in remand custody before he was sentenced.

2. The applicant avers such period spent in remand was not factored from the imposed sentence as law requires and prays such period be discounted from the sentence meted.

3. That the Hon. Court may be pleased to order for absolute discharge or conditional discharge pursuant to section 35 of the Penal Code.

4. That the applicant may make more prayers during hearing and determination of this application.

3. The application is supported by an affidavit sworn by the Applicant filed on same date. In that affidavit the Applicant deposes that, vide a Re-sentencing application vide Milimani Misc. Criminal Case No. 890 of 2011, his death penalty was set aside and in its place a sentence of 10 years imposed. He deposes that he had been convicted by the lower court of robbery with violence contrary to **section 296(2)** of the **Penal Code**. He avers that he had spent 9 months in remand custody. He urges the court to review his sentence.

4. In his oral submissions the Applicant urged the court to review the 10 years' sentence imposed on him by Kimaru, J and that the court should order the sentence to begin from the date of his arrest. He urged that he opted to file the instant application instead of going on appeal.

5. Ms. Kibathi, Learned Prosecution Counsel opposed the application. Counsel urged that the Applicant was challenging a sentence imposed against him by Kimaru, J, of a court of parallel jurisdiction as the instant court. In that regard she urged the court to find that the court lacked jurisdiction to entertain the application.

6. Ms. Kibathi urged that she had perused the orders of Kimaru, J. Counsel urged that the learned Judge had stated clearly that he had considered the time the Applicant spent in custody during trial before making his orders. Counsel urged the court to dismiss the application.

8. I have considered the application before me, together with the affidavit in support thereto, together with the oral submissions of both the Applicant and the Counsel for the State. What stands out clearly is the Applicant made an application for Re-sentencing, which was heard and determined by this court. The instant application is challenging the order made by this court, in particular, the order by the learned Kimaru, J.

8. The **Supreme Court in Election Petition Nos. 3, 4 and 5 Raila Odinga & others vs. IEBC & others [2013] eKLR**, cited an excerpt from an Article, *The Origins of the Functus Officio Doctrine, With Specific Reference To Its Application to Administrative Law* by Daniel Malan Pretorius 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.”

9. The Court of Appeal in **Telkom Kenya Limited v John Ochanda [2014] eKLR** held that:

“functus officio is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon”.

10. The Applicant is challenging the order in sentence by Hon. Kimaru, J. made on the 13th March, 2019. The learned judge is of parallel jurisdiction as this court. That means that the decision by Hon. Kimaru J. is by this court, meaning that this court has already rendered a final determination on the matter before me. That being the case, this court cannot entertain the instant application. Similarly, it was not open for the Applicant to return to this court to challenge the decision made by this court. In the result, the application is incompetent and is accordingly struck out.

DATED SIGNED AND DELIVERED THROUGH TEAMS THIS 30th DAY OF NOVEMBER, 2020

LESIT, J

JUDGE

In the presence of

KinyuaCourt Assistant

.....For Applicant

..... For the Respondent

LESIT, J.

JUDGE

Novemberth, 2020