



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

Coram: D. K. Kemei - J

**MISCELLANEOUS CRIMINAL APPLICATION NO. 36 OF 2020**

**ALEX MUTHINI MUSYA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. **Alex Muthini Musya**, the Applicant herein was charged with the offence of robbery with violence contrary to section 295 as read with section 296(2) of the Penal Code. He was convicted and sentenced by the trial court to serve death sentence.
2. The death sentence was later quashed and the file remitted to the trial court for resentencing. Upon resentencing, he was resented to serve 25 years' imprisonment from the date of the decision. He was aggrieved by the decision of the trial court and appealed to this court seeking that the court invoke Article 50(2)(p) of the Constitution, review his sentence and that he be granted a lenient sentence. The appeal was partly allowed to the extent that the applicant's sentence should run from the date of arrest namely 10.10.2014.
3. The Applicant has now filed a second application before this court where he seeks that his sentence be reduced to the time served.
4. From the import of the functus officio doctrine this court cannot consider the application. 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.”*

From the foregoing, it is clear that this court is no longer seized with jurisdiction to entertain the applicant in view of the fact that it has already discharged its duties as required by law. This court had earlier handled the application in which the death sentence was quashed and applicant directed to go for resentencing before the trial court. The applicant was duly resented and moved back to this court on appeal against the resentence which appeal was duly determined and that the applicant's sentence was ordered to commence from the 10.10.2014. This court thereafter became functus officio having discharged its duty. The remaining option is for the applicant to proceed to the Court of Appeal for redress.

5. In the upshot the Applicant's application filed on 10.3.2020 lacks merit. The same is dismissed.

It is so ordered.

**Dated and delivered at Machakos this 26<sup>th</sup> day of November, 2020.**

**D. K. Kemei**

**Judge**