

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

Coram: D. K. Kemei - J

CRIMINAL APPLICATION 113 OF 2019

MUTHUI MWANGANGI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant vide his application filed on 31.7.2019 is seeking a re-trial for purposes of resentencing in line with the case of **Francis Karioko Muruatetu & Another v R (2017) eKLR**.

2. The issue for determination is whether the court may grant the order sought.

3. I note from the record that the applicant had appealed to this court against the decision of the trial court, which appeal was dismissed by Makhandia J (as he then was) on 5.10. 2012. He lodged an appeal to the Court of Appeal which was dismissed on 18.7.2014 He later filed a miscellaneous application to this court which application was dismissed in view of the *functus officio* doctrine. In view of the foregone, I associate myself with the finding of this court earlier made in the Misc. Application No. 17 of 2018 that dismissed the application on grounds of the *functus officio* doctrine. This court having determined the appeal and the subsequent application is now functus officio. Due to the hierarchy of courts this court now does not have jurisdiction to entertain the matter. The applicant should approach the appellate court for redress.

4. In the result, it is my finding that the applicant's application filed on 31.7.2019 lacks merit. The same is dismissed.

It is so ordered.

Dated and delivered at Machakos this 26th day of November, 2020.

D. K. Kemei

Judge