

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

Coram: D. K. Kemei - J

MISCELLANEOUS CRIMINAL APPL. NO. 180 OF 2019

FRANCIS MUENDO JOHN.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON RESENTENSING

1. Francis Muendo John, the Applicant herein was charged with defilement contrary to section 8(1) as read with section 8(4) of the Sexual Offences Act. He was convicted and sentenced to serve 15 years' imprisonment.

2. The Applicant was aggrieved by the decision of the trial court and filed an appeal to this court which was subsequently dismissed.

3. The Applicant did file a second appeal to the Court of Appeal but later withdrew it. He filed an application in this court seeking a retrial and the same was dismissed vide ruling that was delivered on 28.10.2019 but however the court found that the 15 years that he was sentenced take into account the time he was in custody. Hence, the applicant's request brought pursuant to section 333(2) of the Criminal Procedure Code has already been decided in his favour and granted vide the ruling dated 28.10.2019. The applicant has now filed the present application in which he seeks resentencing pursuant to the decisions in **Francis Karioko Muruatetu & Another v R (2017) eKLR** and **Evans Wanjala Wanyonyi v R (2019) eKLR**.

From the import of the functus officio doctrine this court cannot consider the application for resentencing.

4. 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.”

In this regard the Applicant's application ought to be directed to the Court of Appeal for consideration since this court is already functus officio.

5. In the upshot, the Applicant's application for re-sentencing lacks merit. The same is dismissed.

It is so ordered.

Dated and delivered at Machakos this 24th day of November, 2020.

D. K. Kemei

Judge