



**Gitela v Republic (Criminal Miscellaneous Application  
E052 of 2024) [2025] KEHC 2176 (KLR) (4 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2176 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
CRIMINAL MISCELLANEOUS APPLICATION E052 OF 2024**

**LN MUTENDE, J**

**FEBRUARY 4, 2025**

**BETWEEN**

**ELIUD OENGA GITELA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Eliud Oenga Gitela, the Applicant, was tried, found guilty and convicted for two (2) counts of Defilement contrary to Section 8(1) as read with Section 8(3) and 8(2) of the [Sexual Offences Act](#), respectively. Following the conviction, he was sentenced to twenty (20) years imprisonment on the first count; and, life imprisonment on the second count.
2. Aggrieved, he appealed to the High Court which dismissed the appeal in its entirety for lack of merit on 30<sup>th</sup> May, 2019.
3. Dissatisfied, he proffered a second appeal to the Court of Appeal which found the appeal devoid of merit and dismissed it in its entirety.
4. Discontented further, the Applicant has approached this court for sentence review. He urges that this court has the power to hear and determine infringements of fundamental rights and award remedies. That those convicted of sexual offences and whose sentences were passed on the basis that trial courts had no discretion but impose mandatory /minimum sentences are at liberty to Petition the High Court for mitigation.
5. In considering the application, I am guided by the case of [Republic v Mwangi, Initiative for Strategic Litigation in Africa \(ISLA\) & 3 others \(Amicus Curiae\)](#) Petition No E018 of 2023 (2024) KEC 34 KLR where the Supreme Court stated that;

“The *ratio decidendi* in the decision was summarized as follows:



"69. Consequently, we find that section 204 of the *Penal Code* is inconsistent with the *Constitution* and invalid to the extent that it provides for the mandatory death sentence for murder. For the avoidance of doubt, this decision does not outlaw the death penalty, which is still applicable as a discretionary maximum punishment".

We therefore reiterate that, this court's decision in Muruatetu, did not invalidate mandatory sentences or minimum sentences in the *Penal Code*, the *Sexual Offences Act* or any other statute." (Emphasis added).

6. Nonetheless, this is a matter that was determined by the High Court which calls into play the principle of finality or *functus officio*. This court having finally exercised its authority in the case and determined the appeal following mitigation rendered before the trial court; it would have no jurisdiction to re-open the case with a view of determining the question of time spent in custody. The doctrine of "*functus officio*" was clearly stated in *Telcom Kenya Ltd v John Ochanda* (2014) eKLR. The court delivered itself thus;

"Functus officio is an enduring principle of law that prevents the re-opening of a matter before a court that rendered a final decision."

7. Notably, the Court of Appeal also dealt with the question of conviction and sentence and dismissed the allegations put forth by the Applicant herein. The court of Appeal being superior to this court, I cannot purport to question its decision.

8. The upshot of the above is that I have no power to grant orders sought. Accordingly, the application which is devoid of merit be and is hereby dismissed.

9. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 4<sup>TH</sup> DAY OF FEBRUARY, 2025.**

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**L.N. MUTENDE**

**JUDGE**

