



**Kimemia v Republic (Criminal Miscellaneous Application
E066 of 2024) [2025] KEHC 1895 (KLR) (3 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1895 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL MISCELLANEOUS APPLICATION E066 OF 2024**

**LN MUTENDE, J
FEBRUARY 3, 2025**

BETWEEN

STANLEY NGUGI KIMEMIA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Stanley Ngugi Kimemia, the Applicant, was tried, found guilty and convicted for the offence of Robbery with violence contrary to Section 296(2) of the [Penal Code](#); and; Rape contrary to Section 140 of the [Penal Code](#). Following the conviction, he was sentenced to suffer death, and, following the appeal to the Court of Appeal, the definite sentence for Rape was held in abeyance.
2. Through an undated application, filed herein on 25/1/2021, the Applicant seeks sentence re-hearing of Nyahururu Criminal Case Number 1596 of 2005. He mitigates that the Supreme Court declared death sentence unconstitutional.
3. 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.”

4. That notwithstanding, 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 mitigation. 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.”

5. Notably, the Court of Appeal dealt with the question of conviction and sentence and rendered itself accordingly.
6. The upshot of the above is that I have no power to grant orders sought. Accordingly, the application is dismissed.
7. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3RD DAY OF FEBRUARY, 2025.

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L.N. MUTENDE

JUDGE

