



**Republic v Kinganga (Criminal Revision E210 of 2024)  
[2025] KEHC 2561 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2561 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL REVISION E210 OF 2024  
HM NYAGA, J  
FEBRUARY 13, 2025**

**BETWEEN**

**REPUBLIC ..... RESPONDENT**

**AND**

**STEPHEN MUTURIA KINGANGA ..... ACCUSED**

**RULING**

1. The Applicant has come to this court under Articles 19,20,22,23,25,27,50,51 and 159 of the Constitution and section 333(2) of the Criminal Procedure Code(CPC) by undated Notice of Motion and sought the following orders:-
  - (a) That the honourable court be pleased to revise the sentence considering the time spent in remand while undergoing trial.
2. It is the Applicant's case that he was charged with the offence of murder, contrary to Section 203 as read with Section 204 of the Penal Code. He was tried and convicted in Criminal Case No. 23 of 2008 and was sentenced to death. He preferred an appeal No. 305 of 2011 in the Court of Appeal but the same was dismissed on 28<sup>th</sup> November 2013.
3. The Applicant also avers that he had come to this court for re-sentencing vide High Court Re-sentencing Petition No. 47 of 2019 where he was re-sentenced to a prison term of 25 years, to commence from the date of conviction.
4. The Applicant states that the court in resentencing him failed to consider the time he had spent in custody.
5. In response, the prosecution left the matter for the court.
6. As conceded by the Applicant, he came for re-sentencing. The court stated that as there was no evidence of the date of arrest, this sentence was to be computed from when he was convicted.



7. The most important question to be answered is whether this court has powers to relook at the sentence, having already re-sentenced the Applicant.
8. It is my opinion that after the delivery of the sentence on 22<sup>nd</sup> February, 2024, this court became functus officio.
9. The Supreme Court of Kenya in the case of *Raila Odinga & 2 Others vs Independent Electoral & Boundaries Commission & 3 Others* [2013] eKLR, cited with approval an excerpt from an article by Daniel Malan Pretorius entitled, "*The Origins of the Functus Officio Doctrine, with Special Reference to its Application in Administrative Law*" (2005) 122 SALJ 832 which reads: -
 

“The functus officio doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision making powers may, as a general rule, exercise those powers only once in relation to the same matter...The [principle] is that once such a decision has been given, it is (subject to any right of appeal to superior body or functionary) final and conclusive. Such a decision cannot be reviewed or varied by the decision maker.”
10. In *Jersey Evening Post Ltd vs Ai Thani* (2002) JLR 542 at 550, it was held thus:
 

“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.”
11. As per the decision of the Court of Appeal in *Telkom Kenya Limited vs John Ochanda (Suing On His Own Behalf and on Behalf of 996 Former Employees of Telkom Kenya Limited)* [2014] eKLR, the functus officio doctrine does not allow;
 

“a merit-based decisional re-engagement with the case once final judgment has been entered and a decree thereon issued.”
12. Even as a court with unlimited jurisdiction, save as may be limited under the *Constitution*, this court cannot assume any other jurisdiction not intended by the said Constitution. Once it has discharged its mandate, its powers end at that point.
13. If the Applicant was aggrieved by the said decision, then the next cause was to appeal to the Court of Appeal and not revert back to this court.
14. This position was also taken by the court in *Mark Mutwiri Mbogo v Republic* [2022] eKLR, where it held as follows;
 

‘Article 50(2) of *the Constitution* gives the right to every accused person of a fair trial which includes:-

  - a. “If convicted, to appeal to, or to apply for review by, a higher court as prescribed by law.”



The foregoing provision rules out the intervention of the High Court to review the orders of another judge in a criminal case.

Among the sentence issues for consideration on appeal before the High Court and which it dealt with were whether the conviction was safe and whether the sentence was commensurate to the offences. The Scope of consideration of sentence includes the application by the trial court of Section 333(2) of the *Criminal Procedure Code*. It is clear that the High Court dealt with the issue of sentence review on appeal.

Consequently, I am of the considered view this court lacks jurisdiction to entertain this application.

The application is hereby struck out for want of jurisdiction.’

15. I find that this court is bereft of jurisdiction and I strike out the application.

**H.M. NYAGA**

**JUDGE**

**DATED, SIGNED & DELIVERED AT MERU THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**H.M. NYAGA**

**JUDGE**

