



**Gacheche v Republic (Criminal Revision E0130 of 2024)  
[2025] KEHC 3091 (KLR) (18 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3091 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
CRIMINAL REVISION E0130 OF 2024  
LN MUTENDE, J  
MARCH 18, 2025**

**BETWEEN**

**SIMON MUNGAI GACHECHE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Simon Mungai Gacheche, the Applicant, was tried, found guilty and convicted for the offence of Defilement Contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act*. Following the conviction, he was sentenced to serve life imprisonment. Aggrieved, he appealed to the High Court presided by Kariuki J who upheld the conviction but, substituted the sentence of life imprisonment with Twenty (20) years imprisonment.
2. Through Notice of Motion dated 24th July, 2024, the Applicant seeks an order for consideration of time spent in custody. The application is premised on grounds couched as Mitigation where he urges that the court did not consider Section 333(2) of the *Criminal Procedure Code*. That he has been rehabilitated; now he can make sober decisions and is ready to integrate with his family.
3. This is a matter that was determined by the High Court which calls into play the principle of finality or functus officio. This court (High 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.
4. 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. The upshot of the above is that I have no power to grant orders sought. Accordingly, the application is dismissed.
6. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 18<sup>TH</sup> DAY OF MARCH, 2025.**

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**L.N. MUTENDE**  
**JUDGE**

