



REPUBLIC OF KENYA



KENYA LAW
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**Katunga v Republic (Criminal Revision E005 of 2025)
[2025] KEHC 9131 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9131 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL REVISION E005 OF 2025**

RC RUTTO, J

JUNE 19, 2025

BETWEEN

SIMON NGOLE KATUNGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant has filed a Notice of Motion Application seeking the following orders;
 - a. Spent
 - b. This Honourable Court be pleased to consider the applicant is remorseful and a first time spent in custody as provided for under section 333(2) of the CPC.
2. The Application is supported by the Applicant's affidavit, in which he deponed that he was convicted of defilement, contrary to section 8 (1) as read with section 8 (2) of the Sexual Offences Act. He is currently serving 25 years after his sentence was reduced by the Court of Appeal. He indicated that his second appeal, vide Court of Appeal Criminal Appeal No 59 of 2019, was dismissed on 23rd October 2020. He contended that the time spent in custody was not taken into account by the Court of Appeal whilst reducing his sentence.
3. The Application was opposed via oral submissions by the prosecution counsel, who indicated that the matter had previously been heard on appeal by the High Court in Miscellaneous Criminal Application Number 214 of 2019 and determined by Kemei J. Following this determination, the Applicant approached the Court of Appeal vide Appeal No 59 of 2019, where the appeal on conviction was upheld, and the sentence was reduced from a death sentence to 25 years imprisonment through a judgment delivered on 23rd October 2020. Thus, the State urged that the court was functus officio.



Analysis & Determination

4. I have considered the Application and the court record and find that the issue for determination is whether this court has jurisdiction to review the sentence and consider the time spent in custody.

5. Jurisdiction of this court is provided for under Article 165(3) of the Constitution of Kenya, 2010 which provides as follows;

Subject to clause (5), the High Court shall have;

- (a) unlimited original jurisdiction in criminal and civil matters;
- (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
- (c) jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;
- (d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of--
 - (i) the question whether any law is inconsistent with or in contravention of this Constitution;
 - (ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;
 - (iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and
 - (iv) a question relating to conflict of laws under Article 191; and
 - (v) any other jurisdiction, original or appellate, conferred on it by legislation.

6. However, by dint of Article 165(6) of the Constitution of Kenya, 2010 this Court cannot supervise superior courts. It provides:

The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court. (Emphasis added).

7. From the record, the Applicant was convicted and sentenced in Kangundo S.O No 23 of 2015. Aggrieved by that judgment, he appealed to this Court in Machakos Miscellaneous Criminal Application No 124 of 2019, where the sentence and conviction were upheld. Subsequently, he appealed to the Court of Appeal vide Nairobi Criminal Appeal No 59 of 2019, which reviewed the sentence and reduced it from life imprisonment to 25 years, effective from the date the Appellant was sentenced by the Trial Court.

8. The Court of Appeal has already rendered its decision in this matter. Given that the Applicant appealed the High Court's decision, and the Court of Appeal, being superior to the High Court in the hierarchy of courts by dint of Article 162 (1) and (2) of the Constitution of Kenya, 2010, has already rendered its decision, this Court no longer has jurisdiction. Consequently, the decision of the Court of Appeal cannot be reviewed or overturned by this Court. I therefore find that this Court is *functus officio* and has no jurisdiction to handle this matter.



9. I am guided by the finding of the court in The Supreme Court in *Raila Odinga & 2 others v Independent Electoral & Boundaries Commission & 3 others* [2013] eKLR held 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.”

10. The Application is therefore found to be without merit and is dismissed.

11. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 19TH DAY OF JUNE, 2025

RHODA RUTTO

JUDGE

In the presence of;

.....Applicant

.....Respondent

Sam, Court Assistant

