



**Kemboi v Republic (Miscellaneous Criminal Application
E056 of 2023) [2025] KEHC 8329 (KLR) (11 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8329 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL APPLICATION E056 OF 2023**

E OMINDE, J

JUNE 11, 2025

BETWEEN

BOAZ KIPLETING KEMBOI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. What is pending before this court is the Applicants' Notice of Motion dated 08/11/2022 seeking, in a nutshell, resentencing. The Applicant was charged and convicted of the offence of Defilement contrary to Section 8(1) as read with 8(2) of the *Sexual Offences Act* in Eldoret Chief Magistrates' Criminal Case No. 4384 of 2010. The trial court sentenced him to serve 30 years' imprisonment vide the Judgement delivered on 20/04/2012.
2. Being aggrieved with the Conviction and Sentence, the Applicant appealed against the same vide Eldoret High Court Criminal Appeal No. 74 of 2012. Upon consideration of the Appeal, the same was dismissed and the sentence upheld vide the Judgement of the court delivered on 20/11/2013. He then filed an Appeal in the Court of Appeal, to wit; Criminal Appeal No. 209 of 2013 which appeal was heard and dismissed and his sentence enhanced from 30 years' imprisonment to life imprisonment vide the Judgement delivered by a three-judge bench on 29/04/2016.
3. The Applicant has now approached this court seeking Resentencing, placing reliance on the decision in Petition No. 97 of 201 - *Edwin Wachira & 9 Others v Republic* as consolidated with Petition No. 88 of 2021, 98 of 2021 and 57 of 2021 at Mombasa High Court. Additionally, he seeks to have the court consider the time he spent in remand custody being 06/07/2010 to 04/08/2011 in computing his sentence. The applicant prayed the court grant him a custodial sentence if it deems it fit and urged the court to allow the application as prayed.



Analysis & Determination

4. Having considered the application as well as the attendant proceedings, it is my considered opinion that the only issue that arises for determination is;

whether the Court has jurisdiction to interfere with the sentence

5. In the case of *Samuel Kamau Macharia v KCB & 2 Others*, Civil Application No. 2 of 2011 stated thus:

“A Court’s jurisdiction flows from either the Constitution or Legislation or both. Thus, a Court of Law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by Law”

6. In *Raila Odinga & 2 Others v Independent Electoral & Boundaries Commission & 3 Others* [2013] eKLR the Supreme Court 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.

7. This court’s jurisdiction is equal and concurrent to that of the Hon Mr. Justice F. Ochieng that upheld both the conviction and sentence of 30 years’ imprisonment that was meted out by the lower court. This decision was subsequently overturned by the Court of Appeal for being illegal and was substituted with a sentence of life imprisonment. For this reason, not only is this court *functus officio*, but it also does not have the jurisdiction to sit on appeal on a decision of the Court of Appeal.
8. It follows therefore that the applicant’s Application is misconceived and devoid of merit and the same is accordingly dismissed in its entirety. Further, in light of the indeterminate nature of the sentence of life imprisonment, the prayer that the period of time the accused spent in remand before conviction as provided under Section 333 (2) of the *Criminal Procedure Code* be factored into his sentence is inapplicable and I now hereby so find.
9. Right of Appeal 14 days

READ DATED AND SIGNED AT ELDORET ON 11TH JUNE 2025

E. OMINDE

JUDGE

