



**SMA v Republic (Miscellaneous Criminal Application 154 of 2019)  
[2024] KEHC 4334 (KLR) (Crim) (15 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4334 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
MISCELLANEOUS CRIMINAL APPLICATION 154 OF 2019**

**LN MUTENDE, J**

**APRIL 15, 2024**

**BETWEEN**

**SMA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. SMW, the applicant, was convicted by the lower court for the offence of incest and sentenced to serve thirty (30) years imprisonment. Aggrieved he appealed to the High Court which upheld the conviction but interfered with the sentence that was set aside and substituted it with twenty (20) years imprisonment.
2. Through an undated application, the applicant seeks review of sentence so that time spent in remand custody can be considered.
3. Revisionary Jurisdiction cannot be invoked where a party has filed an appeal. The appellant’s appeal was heard and determined to finality therefore issues raised cannot arise. This court would therefore not have Jurisdiction to determine the matter as it is *functus officio*.
4. The Supreme Court expounding on the doctrine of *functus officio* in *Raila Odinga & Others vs. IEBC & Others* [2013] eklr citing with approval an excerpt from an article by Daniel Malan Pretorius, in “The Origins of the *functus officio* Doctrine, with Specific Reference to its Application in Administrative Law,” (2005) 122 SALJ 832 stated thus:

“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 a superior body or functionary) final and conclusive. Such a decision cannot be revoked or varied by the decision-maker.”

5. The upshot of the above is that this court being functus officio is not seized of jurisdiction to determine the matter. In the result, the application fails and is struck out.
6. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 15<sup>TH</sup> DAY OF APRIL, 2024.**

**L. N. MUTENDE**

**JUDGE**

In The Presence Of:

Court Assistant – Gladys

