



**Mokua & another v Republic (Criminal Revision E007 of 2024)
[2024] KEHC 7469 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7469 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL REVISION E007 OF 2024
WA OKWANY, J
JUNE 13, 2024**

BETWEEN

CLIFF BIKERI MOKUA 1ST APPLICANT

EDWIN CHWEYA MOKUA 2ND APPLICANT

AND

REPUBLIC REPUBLIC

*(From the Original Judgment and Sentence in the Chief
Magistrate's Court at Nyamira in Criminal Case No. 685 of 2011)*

RULING

1. The Applicants herein were jointly charged with the offence of robbery with violence contrary to section 295 as read with section 296 (2) of the *Penal Code*. They were and convicted by the trial court and sentenced to life imprisonment.
2. The record shows that they initially applied for the revision of their sentence before this court, differently constituted, and in a ruling delivered on 21st February 2019, Ochieng J. (as he then was) revised the sentence and held that: -

“I find and hold that the Petitioners shall be re-sentenced to 20 years’ imprisonment. The said sentences will run from 4th December 2012 when the Petitioners were first sentenced.”
3. The Applicants subsequently filed the present Application seeking the reduction of their sentence on grounds that they had suffered in prison, had deteriorating health, are remorseful for their crime, had reformed and desired to be reunited with their young families.
4. The Application was supported by an affidavit sworn by both Applicants.



5. At the hearing of the Application, Mr. Chirchir submitted that the Applicants' life sentence had already been revised and reduced to 20 years imprisonment. According to the Respondent, this court was therefore functus officio following its earlier orders on revision.
6. I have considered the rival arguments by both sides and I find that the main issue for determination is whether the Application is merited.
7. Article 50 of the [Constitution](#) provides for the rights of an accused person as follows: -
 - (2) Every accused person has the right to a fair trial, which includes the right—
 - (q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.
8. Article 165 also provides for the High Court's supervisory powers as follows: -
 - (6) 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.
9. Sections 362 and 364 of the [Criminal Procedure Code](#) empowers the High Court to call for the lower court records in order to satisfy itself as to the legality, correctness and appropriateness of the decision made by the lower court. The said provisions stipulate thus:-
 362. Power of High Court to call for records

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.
 364. Powers of the High Court on Revision
 - (1) In the case of a proceeding in a subordinate court, the record of which has been called for or which has been reported for order, or which otherwise comes to its knowledge, the High Court may –
 - (b) In the case of any other order other than an order of acquittal, alter or reverse the order.
 - (2) No order under this section shall be made to the prejudice of an accused person unless he had had an opportunity of being heard either personally or by an advocate in his own defense:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.
10. My understanding of the above provisions is that they are applicable only where the review sought is in respect to the decision of the subordinate court and not a court of concurrent or higher jurisdiction.
11. In the present case, it is clear to this had already exercised its discretion by revising the sentence imposed by the trial court from life imprisonment to a 20-year term. The question that arises is whether this court has the jurisdiction to grant the orders sought or is functus officio as submitted by Counsel for the Respondent.



12. In *Jersey Evening Post Limited v Al Thani* [2002] JLR 542 at 550, the concept of functus officio was explained 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 on adjudication must be taken to a higher court if that right is available.”

13. It is my finding that this Court having already revised the sentence passed by the trial court, became functus officio and cannot once again entertain an application for revision. My take is that the proper forum for the Applicants to present their grievance should have been before the Court of Appeal in the event they are dissatisfied with this court’s decision.

14. I find that this court cannot call for its own record and exercise jurisdiction over a decision over which it has already become functus officio. It is my finding that this Court lacks the jurisdiction to reconsider or review the sentence passed by a Judge of concurrent jurisdiction.

15. In the end, I find no merit in the Application which I hereby dismiss for lack of merit.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NYAMIRA VIA MICROSOFT TEAMS THIS 13TH DAY OF JUNE 2024.

W. A. OKWANY

JUDGE

In the Presence of: -

The Applicants

Mr. Chirchir for the Respondent

C/AA - Anita/Georgina

