



**Bore v Republic (Criminal Revision E003 of 2024)  
[2024] KEHC 8625 (KLR) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8625 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL REVISION E003 OF 2024**

**JN ONYIEGO, J  
JULY 18, 2024**

**BETWEEN**

**ABDINASSIR GUHAD BORE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant herein was tried and convicted of the offence of defilement in Criminal Case No. 103 of 2012 at Mandera Law courts. He pleaded not guilty and the matter went to full trial. The trial court found him guilty and sentenced him to life imprisonment. Upon appealing against the said judgment and sentence in Garissa high court criminal appeal number 74 of 2012, the court pronounced itself via a judgment delivered on 09.12.2013 thus upholding the finding of the trial court.
2. Undeterred, the applicant moved the Court of Appeal via Criminal Appeal No. 1 of 2014 wherein the Court after considering the appeal equally dismissed the same.
3. He has thus filed the current application dated 21.02.2024 seeking for orders inter alia; that this Honourable Court be pleased to review his sentence as meted out by this court.
4. The application in a nutshell is based on the fact that after having been tried and convicted, he was sentenced to serve a life imprisonment. That he had learnt his lessons given that he had reformed and rehabilitated while in the prison. He thus urged this court to grant the prayers sought.
5. The application was canvassed by way of oral submissions wherein the applicant urged this court to review his sentence noting that he had since reformed. He urged this court to find his application merited and thereby resentence him considering that he had exhausted all his avenues for a further appeal.



6. Mr. Owuor, the learned counsel for the prosecution in rebuttal submitted that the application herein was underserved as the same had been determined by a court of concurrent jurisdiction. That the same notwithstanding, the applicant had previously filed an appeal before the Court of Appeal which was heard and determined. As a consequence, counsel urged this court to dismiss the application for the same was devoid of merit.
7. I have considered the application herein together with the submissions by both parties. The only issue for determination is whether the order for resentencing can be granted.
8. The applicant has invoked the resentencing jurisdiction of this court stating that he did not get a chance to mitigate during sentencing and further, that he had exhausted all his avenues for appeal. He thus urged that it was just and mete for this court to allow the prayers sought.
9. It is trite that sentencing is a judicial exercise. Once a judge or a judicial officer has pronounced a sentence, he/she becomes functus officio. If the sentence is illegal or inappropriate the only court which can address it is the appellate court. *Black's Law Dictionary* Tenth (10<sup>th</sup>) Edition defines sentence as: The judgment that a court formally pronounces after finding a criminal defendant guilty; the punishment imposed on a criminal wrongdoer.
10. Remitting a matter to the trial court which had become functus officio after sentencing flies in the face of the doctrine of functus officio. It amounts to asking the trial court to clothe itself with the jurisdiction of an appellate court. [ Also See *Republic v Ongaro & another* (Criminal Case 62 of 2013) [2023] KEHC 2309 (KLR)].
11. The above notwithstanding, the applicant previously moved the Court of Appeal in attempt to set aside the said sentence and/ or quash his conviction. Noting that the Court of Appeal has pronounced itself by upholding the finding of the trial court and the High Court, this court cannot reopen the same. It therefore follows that this court lacks the requisite jurisdiction to set aside the finding by the Court of Appeal.
12. From the foregoing, I find that I have no jurisdiction to entertain the applicant's application in resentencing and as a consequence, the applicant's prayer for resentencing is hereby declined.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 18<sup>TH</sup> DAY OF JULY 2024**

**J. N. ONYIEGO**

**JUDGE**

