



**Njeri alias Daddy v Republic (Criminal Revision E094 of 2021)
[2024] KEHC 9380 (KLR) (Crim) (15 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9380 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E094 OF 2021
LN MUTENDE, J
JULY 15, 2024**

BETWEEN

DANIEL KIHUNGI NJERI ALIAS DADDY APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Daniel Kihungi Njeri alias Daddy, the applicant, was convicted by the High court presided over by Lessit J (As she then was) for the offence of Murder and sentenced to serve twenty (20) years imprisonment, time spent in custody having been considered.
2. Through an undated application, filed herein, he seeks compliance with Section 333(2) of the [Criminal Procedure Code](#) in order for time he spent in custody to be taken into consideration.
3. The application is opposed by the Respondent who argue that time spent in custody was considered by the trial Judge.
4. Section 333(2) of the [Criminal Procedure Code](#) provides that:
 - (2) Subject to the provisions of section 38 of the [Penal Code](#) (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this [Code](#).

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.

5. This is a matter that was determined by a court of concurrent jurisdiction with the instant court which addressed the question of sentence taking into account time spent in custody. This court would therefore not have Jurisdiction to determine the matter as it is functus officio.



6. The Supreme Court expounding on the doctrine of *functus officio* in *Raila Odinga & Others v 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.”

7. 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.
8. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT
NAIROBI THIS 15TH DAY OF JULY, 2024.**

L. N. MUTENDE

JUDGE

