



**Nyamokoba v Republic (Criminal Revision E010 of 2023)  
[2024] KEHC 8458 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8458 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CRIMINAL REVISION E010 OF 2023**

**WA OKWANY, J**

**JULY 4, 2024**

**BETWEEN**

**RONALD ONYINKWA NYAMOKOBA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant moved this Court through a Notice of Motion dated 11<sup>th</sup> March 2023 seeking orders, *inter alia*, that the sentence imposed by the trial court be computed from the time of arrest. The Application is supported by the Applicant's affidavit wherein he states that his appeal against conviction was dismissed but that the court should consider computing his sentence from the time of his arrest because he was a first offender. He further averred that he has already served 7 years of his sentence and had 4 years to go before completing his sentence.
2. I have considered the law governing revision of sentence and the parties' rival submissions. I find that the main issue for determination is whether the Application for revision is merited.
3. 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.
4. The powers of the High Court, on revision, are premised on Article 165 of the Constitution which states 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.



5. Sections 362 and 364 of the [Criminal Procedure Code](#) also empower the High Court to call for the records of a subordinate court and satisfy itself as to the legality, correctness and appropriateness of a decision made by that 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.

6. In the present case, it was not disputed that the Appellant’s appeal in Nyamira [Criminal Appeal No. 56 of 2017](#) was heard and dismissed by Majanja J.

7. The powers of Revision of the High Court apply only with respect to decisions emanating from subordinate courts. This mean that the High Court cannot call for its own records and examine the same for legality, correctness and appropriateness. In other words, a party seeking redress from a decision of a subordinate court may appeal to the High Court or apply for review at the High Court.

8. My finding is that this court became functus officio upon hearing and determining the Applicant’s appeal and cannot be called upon to revisit the same matter on review. The concept of functus officio was discussed in [Jersey Evening Post Limited v. Al Thani](#) [2002] JLR 542 at 550, 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.”

9. Taking a cue from the above decision, I find that the only avenue that is available to the Applicant in this matter is to approach the Court of Appeal for redress and not this court which has already exhausted its mandate during the appeal.

10. For the above reasons, I find that the instant application is not merited and I therefore dismiss it.



11. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA MICROSOFT  
TEAMS THIS 4<sup>TH</sup> DAY OF JULY 2024.**

**W. A. OKWANY**

**JUDGE**

