



**Gitau v Republic (Miscellaneous Criminal Application  
E176 of 2021) [2023] KEHC 148 (KLR) (5 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 148 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
MISCELLANEOUS CRIMINAL APPLICATION E176 OF 2021**

**GL NZIOKA, J**

**JANUARY 5, 2023**

**BETWEEN**

**MOSES WAMUMBE GITAU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. By a chamber summons application filed in court on November 10, 2021, the applicant is seeking for review of the sentence meted against him vide Criminal Case No 406 of 2012, at the chief magistrate's court at Naivasha. He prays that, the court be pleased to revise the sentence and take into account the provisions of section 333(2) of the Criminal Procedure Code. The application is supported by an affidavit sworn by the applicant
2. The application was served but no response was filed. However, I note from the materials placed before the court that, the applicant was arraigned before the chief magistrate's court charged with the offence of defilement contrary to section 8 (1) as read with section 8 (3) of the Sexual Offences Act and an alternative count of committing an indecent act with a child contrary to section 11 of the said act. He was subsequently convicted on the main count and sentenced to serve twenty (20) years imprisonment.
3. However, he subsequently appealed against the decision vide High Court Criminal Case No 16 of 2014. The appeal was heard and dismissed in its entirety on September 27, 2018.
4. In my considered opinion, once the appeal was heard in this court and a final decision rendered, this court became functus officio. According to Ulpian, after a judge has delivered his judgment, he immediately ceases to be the judge:

*' hoc jure utimur ut iudex qui semel vel pluris vel minoris condemnavit, amplius corrigere sententiam suam non posset; semel enim male vel bene officio functus est.'* (see Alexandr Koptev, 'Digestae Justinian' The Latin Library at Book 42, Title 1, Note 55, online:



The gist of Ulpian's words is: '[A] judge who has given judgment, either in a greater or a smaller amount, no longer has the capacity to correct the judgment because, for better or for worse, he will have discharged his duty once and for all.' (see translation in Daniel Malan Pretorius, 'The Origins of the Functus Officio Doctrine, with Specific Reference to Its Application in Administrative Law' (2005) 122:4 SALJ 832 at 836).

5. The law of functus officio thus dictates that, decision-makers; judges, administrative officials, or arbitrators, cannot as a general rule re-open their decisions to correct a mistake. There is no opportunity for them to; 'do better next time' in the same case because there will be no next time. They must get it right the first time, for that will be their only time.
6. Further, in the journal by the University of Queensland, on 'The Finality of Judicial Decisions', it is stated that, a court becomes functus officio in the following events;
  - a) A judicial tribunal, becomes functus officio in respect of decisions made by it before it becomes defunct;
  - b) The judicial tribunal's powers to revise its own decisions or to re-try any case after decisions made by it in the original trial have been rescinded.
7. In the same vein, the Court of Appeal in the case of; [Telkom Kenya Limited vs John Ochanda \[2014\] eKLR](#), stated that:

' Functus officio is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon.

The doctrine is not to be understood to bar any engagement by a court with a case that it has already decided or pronounced itself on. What it does bar; is a merit-based decisional re-engagement with the case once final judgment has been entered and a decree thereon issued.'
8. The upshot thereof is, I find and hold that, this court is functus officio and strike out the current application.
9. It is so ordered.

**DATED, DELIVERED AND SIGNED ON THIS 5<sup>TH</sup> DAY OF JANUARY, 2023.**

**GRACE L NZIOKA**

**JUDGE**

**In the presence of:**

Applicant in person

Mr Michuki for the Respondent

Ms Ogutu- Court assistant

