



**Likai v Republic (Miscellaneous Criminal Application
E185 of 2021) [2023] KEHC 151 (KLR) (4 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 151 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS CRIMINAL APPLICATION E185 OF 2021**

GL NZIOKA, J

JANUARY 4, 2023

BETWEEN

DAVID LETIRA LIKAI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By an application filed in court on, November 23, 2021, the applicant is seeking for review of the sentence meted out against him vide criminal case 1099 of 2011, at the Chief Magistrate’s Court at Naivasha. He prays that, the court be pleased to revise the sentence pursuant to the provisions of Article 50 (2) (p) (q) of the Constitution and section 333(2) of the Criminal Procedure Code.
2. The Respondent has not filed any response to the application. 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 robbery with violence contrary to section 296 (2) of the Penal Code. He was subsequently convicted and sentenced to suffer death.
3. However, he subsequently appealed against the trial court’s decision vide High Court Criminal Appeal No. 2 of 2024, but the appeal was dismissed in its entirety, on November 17, 2016. He then filed a Miscellaneous Application No. E038 of 2021, seeking for re-sentencing and it was dismissed. He has lodged an appeal in the Court of Appeal, and both the trial court and High Court files have been forwarded to that court.
4. The applicant has once again filed the current application for sentence review. In my considered opinion, once the appeal was heard in this court and a final decision rendered, this court became *functus officio*. 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.

5. 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.

6. I therefore find and hold that, the filing of this application amounts to an abuse of the court process and therefore strike out as such and/or for want of jurisdiction or dismiss it for lack of merit.

7. It is so ordered.

Dated, delivered and signed on this 4th day of January 2023

GRACE L NZIOKA

JUDGE

In the presence of:

Applicant in person virtually

Mr. Ndiema for the Respondent

Ms Ogutu-Court Assistant

