



**Macharia v Republic (Miscellaneous Criminal Application
E152 of 2021) [2023] KEHC 171 (KLR) (4 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 171 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS CRIMINAL APPLICATION E152 OF 2021**

GL NZIOKA, J

JANUARY 4, 2023

BETWEEN

PETER MATHERI MACHARIA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By an application filed in court on October 5, 2021, the applicant is seeking for review of the sentence meted against him vide Criminal Case S/O No. 34 of 2016, 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 incest contrary to section 20 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 thirty (30) years imprisonment.
3. However, he appealed against the decision vide High Court Criminal Case No. 24 of 2017, wherein the court remitted the matter to the trial court for resentencing. I note that, there is no indication that, the re-sentencing has been done.
4. As such, the application herein for review of the thirty (30) years sentence amounts to an abuse of the court process, and the court is functus officio, in relation to the subject sentence. In that regard, 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.”

5. The upshot thereof is, I find and hold that, this court is *functus officio* and strike out the current application and/or dismiss it for lack of merit.
6. 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

