



**Muhia v Republic (Miscellaneous Criminal Application
E190 of 2021) [2023] KEHC 175 (KLR) (4 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 175 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS CRIMINAL APPLICATION E190 OF 2021**

GL NZIOKA, J

JANUARY 4, 2023

BETWEEN

JOSEPH NJUGUNA MUHIA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By an application filed in court on, November 29, 2021, the applicant is seeking for review of the sentence meted out against him vide criminal case No. 378 of 2017, at the Chief Magistrate’s Court at Naivasha. He prays that, the court be pleased to revise the sentence by invoking the provisions of 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. 34 and 29 of 2019 (consolidated), but the appeal was dismissed in its entirety. 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powers to revise its own decisions or to re-try any case after decisions made by it in the original trial have been rescinded.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. In the same vein, the Court of Appeal in the case of; *Telkom Kenya Limited v 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.”
7. I therefore find and hold that, the filing of this application amounts to an abuse of the court process and therefore strike out the application herein accordingly for want of jurisdiction and/or for being an abuse of the court process.
8. 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

