



**TMM v Republic (Miscellaneous Criminal Application  
E052 of 2022) [2023] KEHC 146 (KLR) (4 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 146 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
MISCELLANEOUS CRIMINAL APPLICATION E052 OF 2022**

**GL NZIOKA, J  
JANUARY 4, 2023**

**BETWEEN**

**TMM ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. By a chamber summons application filed in August 15, 2022 the applicant is seeking for review of the sentence meted against him vide Criminal Case S/O No. 47 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;article 50(2), (p),(q) of the *Constitution* and section 333(2) of the *Criminal Procedure Code*. The application is supported by an affidavit sworn by the applicant
2. The respondent has not filed a 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 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 (1) of the said Act. He was subsequently convicted on the main count and sentenced to life imprisonment.
3. However, he appealed against the decision vide High Court Criminal Case No. 15 of 2017, wherein the appeal was dismissed on November 6, 2018, in its entirety. The applicant subsequently filed a Miscellaneous Criminal Application No. 94 of 2019, seeking for similar orders as herein. That application was dismissed and he filed the current application.



4. As such, the application herein for review sentence amounts to an abuse of the court process, and this court having heard and determined the appeal, it is functus officio. In that regard, 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.”

5. Furthermore, the applicant has lodged an appeal to the Court of Appeal and both the trial court and High Court files have been forwarded to that court.

6. 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.

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

