



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION OF THE HIGH COURT

MISC CR APPEAL NO. E048 OF 2021

JANE NAMBUYE MANYONGE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. On 22nd April 2021, the applicant filed an application for review of sentence meted against her and prayed that, she be granted a lesser sentence based on the “mitigation factors, sentencing guidelines 2016, and rehabilitation.
2. The application is supported by the affidavit sworn by the applicant. She avers that, she was charged with the offence of; Murder contrary to; Section 203 as read together with Section 204 of the Penal Code. She was convicted and sentenced to suffer death.
3. However, she appealed against the decision vide High Court in Criminal Number 114 of 2017 to the Court of Appeal vide Criminal Appeal Number 73 of 2019; whereby the appeal against conviction was dismissed but the appeal against sentence was allowed and the sentence consequently reduced to twenty (20) years, with effect from the date of sentence; on 12th June 2017.
4. It is this sentence that; the applicant seeks review thereof. She avers in the supporting affidavit that, she is a first offender, and deeply remorseful for the unfortunate incident that occurred seven years down the line.
5. That she is 52 years old and she is a sole breadwinner of her entire family. Further, she is in full control of her emotions and can withstand the challenges of life. Additionally, since her incarceration, she has taken rehabilitation programs positively and has greatly benefited therefrom.
6. That prior to her incarceration, she was a teacher and despite incarceration, she has continued to teach English and Christian Religious Education at the Prison School as evidenced by the recommendation letter. Thus, she has acquired skills in beadwork, embroidery and cross-stich.
7. Hence, her humble prayer, is that if she is given “a golden second chance”, she will work industriously to advocate for social values among the youth and enlighten women on repressions of domestic violence.
8. The applicant also filed a lengthy document entitled “mitigation submissions”. In the subject document (annexed to the supporting affidavit), the applicant discusses various sub-topics inter alia; the background facts of the case, personal statement on the crime, circumstances of the crime and of the offender, reform and rehabilitation, sentence and sentence proportionality.
9. However, the application was opposed by the Respondents on the grounds of opposition, filed on 26th April 2021, reproduced here below;
 - a) *That the court lacks jurisdiction to entertain the application,*
 - b) *That the court is functus officio as the matter was already heard and determined by the Court of Appeal and a judgment entered on the 8th May 2020*
 - c) *That the application is an abuse of court process.*
 - d) *That the application lacks merit, is ill advised and the same should be dismissed in its entirety.*

10. I have considered the application, the affidavit in support and the grounds of opposition, thereto, and I find that, as aforesaid, the applicant was charged with the offence of; Murder vide High Court Criminal Case Number 114 of 2017 and sentenced to death but sentenced reduced to twenty (20) years imprisonment, vide Court of Appeal number 73 of 2019.

11. The moment the matter was heard and determined by the High court, the court became *functus officio*. The *functus officio* doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. That once such a decision has been given, it is (subject to any right of appeal to a superior body or functionary) final and conclusive, as stated in the “**Application in Administrative Law,**” (2005) 122 SALJ 832.

12. Similarly, 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.*

13. 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.”

14. In deed the applicant exercised her right and appealed to the Court of Appeal, which dealt with the matter as stated herein. However, I note that, initially, the applicant filed a petition of appeal and grounds of appeal herein on; 18th February 2021. It is not understandable, why she would file an appeal in the trial court when she was fully aware that, the court of appeal had already heard the matter and determine the matter.

15. I further note a document herein on the court record, addressed to the Deputy Registrar of Court of Appeal, P. O Box 30041-00100-Nairobi, filed herein on 14th April 2021. It is not clear whether the applicant has filed another appeal in the Court of Appeal. The application herein and filing of multiple matters is an abuse of the process of the court.

16. It is therefore imperative that, the Deputy Registrar confirms whether this applicant has filed any other parallel proceedings in any other court.

17. Be that as it were, it follows from the aforesaid that, this court is *functus officio*, as it relates to this matter and therefore lacks jurisdiction to hear and determine this matter. The upshot is that; the application is struck out for want of jurisdiction.

18. It is so ordered.

DATED, DELIVERED VIRTUALLY AND SIGNED ON THIS 3RD DAY OF MAY 2021.

GRACE L. NZIOKA

JUDGE

In the presence of:

Applicant present in person

Ms Kibathi for the Respondent

Court Assistant – Edwin Ombuna