



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION E338 OF 2021

EVANS ODUOR.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. **Evans Oduor**, the applicant, was convicted by the lower court for the offence of defilement and sentenced to serve twenty (20) years imprisonment. His first appeal was dismissed. The High Court upheld the conviction and sentence of the trial court. Aggrieved, he preferred a second appeal to the Court of Appeal which was dismissed on 10<sup>th</sup> July, 2020.

2. On 10<sup>th</sup> August, 2021, he approached this court through an application seeking revision in order for the court to take into account the period he stayed in remand custody pursuant to the provisions of **Section 333 (2)** of the Criminal Procedure Code.

3. The Respondent filed grounds of opposition where it stated that the application is an abuse of the court process as the court is functus officio.

4. Revisionary Jurisdiction cannot be invoked where a party has filed an appeal. The appellant's appeal was heard and determined to finality therefore issues raised cannot arise. This court would therefore not have Jurisdiction to determine the matter as it is functus officio.

5. The Supreme Court expounding on the doctrine of functus officio in *Raila Odinga & Others vs. IEBC & Others [2013] eKLR* citing with approval an excerpt from an article by Daniel Malan Pretorius, in *"The Origins of the functus officio Doctrine, with Specific Reference to its Application in Administrative Law," (2005) 122 SALJ 832* stated thus: -

*"The functus officio doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision-making powers may, as a general rule, exercise those powers only once in relation to the same matter.... The [principle] is 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. Such a decision cannot be revoked or varied by the decision-maker."*

6. The upshot of the above is that this court being functus officio is not seized of jurisdiction to determine the matter. In the result, the application fails and is struck out.

7. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY,

THIS 16<sup>TH</sup> DAY OF NOVEMBER 2021

L. N. MUTENDE

JUDGE

**IN THE PRESENCE OF:**

*Court Assistant – Mutai*

*Applicant*

*Ms. Ndombi for the State*