



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

Coram: D. K. Kemei - J

**MISC.CRIMINAL APPL. NO. 12 OF 2020**

**MUTIO MUOKI.....APPLICANT**

**VERSUS**

**REPUBLIC.....PROSECUTOR**

**RULING**

1. The Applicant was charged and convicted with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. She was sentenced to 20 years' imprisonment by this court on 18.9.2018 and has now applied to this court for review of sentence.
2. The state did not reply to the application.
3. The application was disposed of by way of written submissions. The respondent submitted that the 20-year sentence is appropriate. It was the argument of counsel that the applicant ought to exercise her right of appeal to the Court of Appeal. It was further the argument of counsel in placing reliance on the case of **Telkom Kenya Limited v John Ochanda (Suing on his own behalf and on behalf of 996 former employees of Telkom Kenya Limited (2014) eKLR** that the court is functus officio and is barred from hearing the instant application.
4. The issue for determination is whether the court may grant the orders sought.
5. I note that there is a judgement that was passed by this court on 2.5.2018 and a ruling on sentence passed on 18.9.2018 and hence it is clear that this court is already functus officio. The applicant should now approach the appellate court for redress in pursuit of her appeal.
6. The term functus officio is defined thus at p.840 of Jowitt's Dictionary of English Law 2 Ed.:

***"Functus officio (having discharged his duty), an expression applicable to a judge, magistrate or arbitrator who has given a decision or made an order or award so that his authority is exhausted".***

7. The exception to the functus officio doctrine is exercise of review.
8. A look at the sentence passed as against the provisions of the law shows that the finding of this court being the trial court is within the law and that this court has already discharged its duty by hearing the case up to conclusion thereby leaving the appellate court to consider the applicant's grievances.
9. The applicant seems to suggest that this court should revisit the sentence imposed as if there was an error. I am satisfied that there is no such error which could even be rectified by section 382 of the Criminal Procedure Code that provides for instances where finding or sentence are reversible by reason of error or omission in charge or other proceedings. It states that:

***"Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of an error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code, unless the error, omission or irregularity has occasioned a failure of justice:***

***Provided that in determining whether an error, omission or irregularity has occasioned a failure of justice the court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings."***

10. I find no error or irregularity or illegality of principle when the court sentenced the applicant to 20 years' imprisonment. It is my finding

that the application lacks merit and the same is dismissed.

It is so ordered.

**Dated and delivered at Machakos this 12<sup>th</sup> day of October, 2020.**

**D. K. Kemei**

**Judge**