



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL REVISION CASE NO. 538 OF 2020**

**LESIT, J**

**PAUL NJOGU MUTHONI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an application for revision of sentence by the Chief Magistrate's Court*

*at Kibera (Hon. A. Onginjo - CM) Criminal case No. 363 of 2015*

*dated 11<sup>th</sup> July, 2018)*

**RULING ON REVISION**

1. The Applicant **PAUL NJOGU MUTHONI** faced a charge of **Being in Possession of Wildlife Trophy** contrary to **section 95** as read with **Section 105** of the **Wildlife Conservation and Management Act, 2013**. He was convicted of this offence and sentenced to 8 years' imprisonment on 11<sup>th</sup> July 2018.

2. He has now approached this court with an application for review of sentence, vide a Notice of Motion filed on the 30<sup>th</sup> June 2020. In his supporting affidavit dated the same day, the Applicant gives what is mitigation for the court's consideration while reviewing the sentence.

3. The Applicant summarized the courses he had attended while in prison, and the fact he was a first offender and remorseful for what he had done. He urged that his appeal to this court was dismissed, but his co-accused acquitted. He said that he was not challenging his conviction but just wanted his sentence reduced.

4. Mr. Momanyi, learned Prosecution Counsel opposed the appeal on grounds that this court was *functus officio*, having heard and determined the Applicant's appeal. That the only option the Applicant had was to file his appeal to the court of appeal.

5. I have considered the submissions by both the Applicant and the Prosecution counsel. The State has objected to this court entertaining the application on the basis it is *functus officio*, on grounds the Applicant has come back to this court a second time. What does it mean to say court is *functus officio*?

6. The **Supreme Court in Election Petition Nos. 3, 4 and 5 Raila Odinga & others vs. IEBC & others [2013] eKLR**, cited an excerpt from an Article, *The Origins Of The Functus Officio Doctrine, With Specific Reference To Its Application To Administrative Law* by Daniel Malan Pretorius which reads:

**“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 superior body or functionary) final and conclusive. Such a decision cannot be reviewed or varied by the decision maker.”**

7. The Court of Appeal in **Telkom Kenya Limited v John Ochanda [2014] eKLR** held 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”.**

8. The Applicant’s appeal was heard by Kimaru, J. and a judgment delivered on the 26<sup>th</sup> February, 2020 dismissing the appeal against both the conviction and sentence. This has not been disputed. A ruling was delivered to the Applicant. That means that this court has heard and made a determination on the matter of Applicant’s sentence. The option that was available to the Applicant was to file a second appeal to the court of appeal challenging the conviction or sentence or both. He has exhausted his chance of appeal in this court, and cannot cloth the matter with a different name (revision). This court is therefore *functus officio*.

9. In the result, this Applicant’s application is incompetent and the same is struck out in its entirety.

**DELIVERED THROUGH TEAMS THIS 12<sup>th</sup> DAY OF OCTOBER, 2020**

**LESIT, J.**

**JUDGE**

**12<sup>th</sup> October, 2020**

**In the presence of:**

Court Assistant

Applicant      In person

For the State/Respondent

**LESIT, J.**

**JUDGE**

**ORDER**

The original file for CM’s Court, JKIA, Criminal Case No. 166 of 2019

be returned to that court for the matter to be heard to its logical conclusion.

**LESIT, J.**

**JUDGE.**

**12/10/2020**