



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

Coram: D. K. Kemei - J

**MISCELLANEOUS CRIMINAL APPL. NO. 121 OF 2019**

**JOSEPHAT WAMBUA MBUVI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING ON RE-SENTENCING**

1. **Josephat Wambua Mbuvi**, the Applicant herein was charged with defilement contrary to section 8(1) as read with section 8(2) of the Sexual Offences Act.

2. The Applicant entered an own plea of guilty before the trial court and was duly convicted and sentenced to serve life imprisonment.

3. The Applicant was aggrieved by the said conviction and sentence and filed an appeal to the High Court. The appeal was duly heard. A judgment was delivered on 27.10.2016 by this court. The appeal was dismissed.

4. The Applicant did file a second appeal against the decision of the High Court to the Court of Appeal. The learned justices of appeal vide judgement delivered on 24.5.2019 dismissed the appeal. The applicant has now filed the present application before this court in which he seeks resentencing pursuant to the decisions in **Francis Karioko Muruatetu & Another v R (2017) eKLR** and **Evans Wanjala Wanyonyi v R (2019) eKLR**.

5. From the import of the functus officio doctrine this court cannot consider the application for resentencing. Once a court becomes functus officio, the only orders it can grant are review orders which are an exception to the functus officio doctrine. The Supreme Court in **Raila Odinga & 2 Others v Independent Electoral & Boundaries Commission & 3 others [2013] eKLR** stated that:

“A court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors nor does it prevent a judicial change of mind even when a decision has been communicated to the parties. Proceedings are only fully concluded, and the court functus, when its judgment or order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are finally concluded, the court cannot review or alter its decision; any challenge to its ruling or adjudication must be taken to a higher court if that right is available.”

6. Most importantly the matter has already been handled by the Court of Appeal and there is no known law that affords this court with the jurisdiction to supervise the decision of a superior court. In this regard the applicant’s application ought to be directed to the Court of Appeal for review of sentence.

7. In the result the Applicant’s application filed on 31.7.2019 lacks merit. The same is dismissed.

It is so ordered.

**Dated and delivered at Machakos this 9<sup>th</sup> day of November, 2020.**

**D. K. Kemei**

**Judge**