



**Joseph Wafula Mukenya v Republic (Miscellaneous Criminal Application
E048 of 2024) [2025] KEHC 13886 (KLR) (6 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13886 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS CRIMINAL APPLICATION E048 OF 2024
DKN MAGARE, J
OCTOBER 6, 2025**

BETWEEN

JOSEPH WAFULA MUKENYA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This is a ruling over an application dated and filed on 2.7.2024 seeking rehearing of the sentence of life imprisonment imposed upon the Applicant.
2. The application is supported by the affidavit of the Applicant and it was deposed in material as follows:
 - a. The Applicant was convicted of the offence of defilement contrary to Section 9(1) as read with 9(2) of the [Sexual Offences Act](#).
 - b. He was sentenced to life imprisonment but the High Court reduced the sentence to 40 years imprisonment on appeal.
 - c. The Applicant seeks this court to uphold the [constitution](#) to do substantial justice.
 - d. The Applicant seeks this court to consider mitigation.
3. The Respondent filed a Replying Affidavit opposing the application on the grounds that the sentence was lawful.

Submissions

4. The Applicant submitted that the sentence of life imprisonment did not consider sentencing guidelines and mitigation. The Applicant submitted that he had undergone reform programs and had earned certified skills in tailoring.



5. The Respondent did not file submissions.

Analysis

6. The issue is whether the Applicant's life sentence should be reduced. It is my understanding that jurisdiction is everything. The court is bound to take jurisdiction where it has and down its tools where it does not have jurisdiction. My senior brother Nyarangi JA, as then he was, immortalized these words, in *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR as follows: -

"Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority:

"By jurisdiction is meant the authority which a court as to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given."

7. This means that the court cannot assume jurisdiction that it does not have nor eschew jurisdiction it has. In the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR, the Supreme Court stated as doth: -

"This Court dealt with the question of jurisdiction extensively in the *Matter of the Interim Independent Electoral Commission (Applicant)*, Constitutional Application Number 2 of 2011. Where the *constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the *constitution*. Where the *constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law."

8. The Supreme Court opined in *Francis Karioko Muruatetu & Another v Republic* (2017) eKLR (Muruatetu I) that the mitigation factors that may reduce a sentence imposed by the law by no way replace judicial discretion.



9. The Applicant appealed to this court and the court determined his life sentence to be 40 years. The Applicant asks this Court to consider reducing the sentence of 40 years. Therefore, the Applicant is effectively appealing against the decisions of this court to the same court. The appeal is to this same court and the attempt is through the back door, not acceptable in law. This is improper. It is an abuse of the Court process.
10. The Court was *functus officio* upon pronouncing itself and the option that the Applicant had was to appeal but not revision. In the case of *George Boke Kisiawo v Republic* [2022] eKLR, D. O. Chepkwony J, Posited as follows:
 8. Further, in the case of *Joseph Maburu alias Ayub –vs- Republic* [2019] eKLR, where the learned Judge stated that:-

“Sentencing is a judicial exercise. Once a Judge or a judicial officer has pronounced a sentence, he/she becomes *functus officio*. If the sentence is illegal or inappropriate the only court which can address it is the appellate one. *Black’s Law Dictionary* Tenth (10th) Edition describes defines sentence as: The Judgement that a court formally pronounces after finding a criminal Defendant guilty; the punishment imposed on a criminal wrongdoer. Remitting a matter to the trial court which had become *functus officio* after sentencing flies in the face of the doctrine of *functus officio*. It amounts to asking the trial court to clothe itself with the jurisdiction of an appellate court. This is an illegality.”
 9. The rule of the thumb is that superior courts cannot sit in review/appeal over decisions of their peers of equal and competent jurisdiction, much less those courts higher than themselves.
11. No such appeal against the decisions of Ngaah, J and Muchemi J was lodged to the Court of Appeal. Even if an appeal was filed, it could only be heard in that court.
12. The application is thus wrongly before this court as the application is *res judicata* and the court is *functus officio*. Therefore, I down my tools. The application dated and filed on 2.7.2024 lacks merit and is accordingly dismissed.

Determination

13. I therefore make the following orders:
 - a. The application filed on 2.7.2024 lacks merit and is accordingly dismissed.
 - b. The file is closed.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 6TH DAY OF OCTOBER, 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of:-

Mr. Kimani for the State

Applicant present

PC Mercy Komu of Kisumu Maximum GK Prison



