**Sumba v Republic (Miscellaneous Criminal Application E173 of 2024)**
**[2025] KEHC 17229 (KLR) (24 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17229 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KAKAMEGA**

**MISCELLANEOUS CRIMINAL APPLICATION E173 OF 2024**

**AC BETT, J**

**NOVEMBER 24, 2025**

**BETWEEN**

**JULIUS SUMBA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was tried and convicted of incest contrary to Section 20 (1) of the *Sexual Offences Act* after which he was sentenced to life.

2. On appeal, his sentence was reduced to 35 years. The appeal was Kakamega HCCR.A. No. 107 of 2014.

3. By a Notice of Motion application dated 13th September 2024, the Applicant prayed for review of the sentence on the grounds that he had pleaded guilty to the offence, the sentence was harsh, and that he had already spent 9 years in prison.

4. The Applicant cited Section 26 (2) of the Penal Code which states:-

> "Save as may be expressly provided by the law under which the offence concerned is punishable, a person liable to imprisonment for life or any other period may be sentenced to any shorter term."

5. The Applicant also stated that he has reformed while in custody and has received various spiritual teachings and that he was a first offender.

6. The issues that arise from the application are:-

   a. Whether Section 26 (1) of the Penal Code is applicable.

b. Whether the application is merited.

7. The Applicant was tried for an offence under the *Sexual Offences Act* which was enacted to promote the prevention and protection of all persons from unlawful sexual acts. The *Sexual Offences Act* is a unique statute in that it prescribes mandatory minimum sentences for certain offences. It follows therefore that the provisions of Section 26 (2) of the Penal Code is not applicable to offences under the *Sexual Offences Act*.

8. The Respondent submitted that the court is functus officio.

9. By his own admission, the Applicant successfully urged the appellate court to reduce his sentence. He now seeks another bite of the cherry or as the Englishmen say, to have his cake and eat it too.

10. Whereas the High Court has power to review a sentence under Article 165 of *the Constitution* and Section 362 of the Criminal Procedure Code, the said power does not extend to applications that are made before the same court after the court has made its final determination on Judgement and Sentence because the court does not have jurisdiction to review its own decisions. If the Applicant was not satisfied with the reduction of the Sentence, his only avenue was to lodge an appeal before the Court of Appeal. This is well set out in Article 50 (2) (q) of *the Constitution* which states:-

> " 2. Every accused person has the right to a fair trial, which includes the right—
>
> (q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law."

11. Once the High Court pronounced itself, it became functus officio. The courts hands are therefore tied as it cannot sit on review of its decisions or that of a court of concurrent jurisdiction. (See Richard Mbaabu Ithalie v. Republic [2025] KEHC 7639 (KLR), and Vincent Chebii v. Republic & Another [2025] KEHC 6901 (KLR)).

12. By seeking review of the sentence already revised on appeal, the Applicant is asking this court to revisit its decision, a power that this court lacks. Kiarie Waweru J. when faced with such an application in the case of Joseph Maburu alias Ayub v. Republic [2019] KEHC 1172 (KLR) stated:-

> " 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 judgment 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 funtus officio after sentencing flies in the face of the doctrine of funtus officio. It amounts to asking the trial court to clothe itself with the jurisdiction of an appellate court. This is an illegality."

13. Having carefully considered the application, I find the same to be bereft of merit. It is hereby dismissed accordingly.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 24TH DAY OF NOVEMBER 2025.**

**A. C. BETT**

**JUDGE**

**In the presence of:**

Applicant present in person via Teams platform

Ms. Chala for the Respondent

Court Assistant: Polycap