

REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL MISC. APPLICATION E064 OF 2025
MARTIN THUMBI KINYUA
APPLICANT

VERSUS

THE REPUBLIC
RESPONDENT

RULING

1. This is an application to revise the sentence meted out by Hon Lady Justice Florence Muchemi on 13.07.2023. The applicant seeks that the balance of his sentence be converted to a non-custodial sentence. He was charged and convicted of manslaughter. The court considered the probation report, which had recommended a non-custodial sentence. The high court declined and gave a 6-year imprisonment and cash bail refunded.
2. The applicant has come now, asking me to set aside the judgment of the High Court. It is a case where Patrick Mukaru Njoroge lost his life. This court has already made a decision and is now *functus officio*.
3. Even if there was no appeal, this court has no jurisdiction ***ratione materiae*** to review the decision on sentences of

the High Court pursuant to Article 165 (6) and 165 (7) of the Constitution. The article provides as follows:

The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

4. The court cannot assume jurisdiction it does not have. 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, *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.

5. Having finished the case before it, the high court is now *functus officio*. The Supreme Court of Kenya in **Raila Odinga -Vs- Iebc & 3 Others** Petition No. 5 Of 2013 cited with approval the following passage from The Origins of the Functus Officio Doctrine with Specific Reference to its Application in Administrative Law by Daniel Malan Pretorious:

...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...

6. It is a legal and constitutional obligation of any court, from the basic-level to the highest level, to preserve and protect the *adjudicatory forum of governance*, and to uphold decorum and integrity in the scheme of justice-delivery. It follows that the court's jurisdiction, in oversight of the question of conscientious and dignified management of the

judicial process, and in safeguarding the scheme of the rendering of justice, will not be exhausted until the court is satisfied and it declares as much. The court does not have the power to interrogate this matter.

7. In any case, the court finds that the Applicant, having been convicted of manslaughter, and the court herein exercised its jurisdiction, then he has to serve a sentence lest he thinks that taking a human life does not have consequences.

Orders

8. The upshot of the foregoing, I make the following orders:
 - a. The application is rejected.
 - b. The file is closed.

DELIVERED, DATED and SIGNED at **Nyeri**, virtually on this **19th** day of **January, 2026**. Judgment delivered through Microsoft Teams Online Platform.

KIZITO MAGARE
JUDGE

In the presence of: -

Pro se Appellant

Ms Kaniu for the Respondent

Court Assistant - Michael