

RULING
HCCRCMISC E023 OF 2025



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA
(CHERERE-J)
HCCRCMISC E023 OF 2025

BETWEEN
EVANS NYAKUNDI
MONARI.....
APPLICANT
AND
DIRECTOR OF PUBLIC
PROSECUTIONS..... **RESPONDENT**

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1. The Applicant, Evans Nyakundi Monari, moved this Court by a Notice of Motion dated 11th March 2025, seeking that the sentence of 30 years imposed upon him be computed from the date of his arrest..
2. The record shows that following a full trial, the Applicant together with two others, was convicted of the offence of murder and sentenced to thirty (30) years' imprisonment on 31st Jul 2015 in **Republic v Evans Nyakundi Monari & 2 others [2015] eKLR - Kisii Criminal Case 12 of 2012.**
3. The Applicant appealed against both conviction and sentence. The appeal was dismissed on 07th February, 2025 by the Court of Appeal in **Monari & 2 others v Republic (Criminal Appeal 337 & 315 of 2019 (Consolidated))**

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[2025] KECA 204 (KLR) (7 February 2025) (Judgment)

thereby affirming the sentence imposed by the High Court.

4. The Respondent opposed the application on jurisdictional grounds, contending that this Court is *functus officio* as the conviction and sentence were conclusively determined by the High Court and subsequently affirmed by the Court of Appeal.
5. I have considered the Notice of Motion, the supporting affidavit, and the reliefs sought. The application, in substance, invites this Court to reopen and vary a sentence that has already been affirmed on appeal.
6. Once a final judgment has been rendered and affirmed by the appellate court, the doctrine of *functus officio* bars the trial court from re-engaging with the merits of that decision. Upon dismissal of the appeal, the judgment of the High Court merged into that of the Court of Appeal, thereby divesting this Court of jurisdiction to revisit the sentence. The provisions relied upon by the Applicant, including section 333(2) of the Criminal Procedure Code, do not clothe this Court with jurisdiction to rehear or reduce a sentence already confirmed on appeal.

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7. In the premises, this Court finds that it lacks jurisdiction to entertain the application.

8. Accordingly, the Applicant's undated Notice of Motion is dismissed for want of jurisdiction.

DELIVERED AT NYAMIRA THIS 21st DAY OF
January 2026



WAMAE.T. W. CHERERE
JUDGE

Appearances

Court Assistant - Hilda

Applicant - Present

For the DPP - Mr. Chirchir (SADPP)
