



REPUBLIC OF KENYA



KENYA LAW
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**Mugure v Republic (Criminal Miscellaneous Application
E039 of 2023) [2025] KEHC 3204 (KLR) (28 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 3204 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL MISCELLANEOUS APPLICATION E039 OF 2023**

**LN MUTENDE, J
JANUARY 28, 2025**

BETWEEN

SAMUEL GITAU MUGURE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Samuel Gitau Mugure, the Applicant, was tried, found guilty and convicted for the offence of Defilement contrary to Section 8(1) as read with Section 8(2) of the [Sexual Offences Act](#). Following the conviction, he was sentenced to life imprisonment.
2. Aggrieved, he appealed to the High Court which dismissed the appeal on 17th October, 2012.
3. Dissatisfied, he proffered a second appeal to the Court of Appeal which found the appeal devoid of merit and dismissed it in its entirety. The Court of Appeal delivered itself thus;

“The complainant in this case was aged 5 years and the offence was serious and exacerbated by the fact that the victim was the Appellant’s neighbour and he should have protected her and not taken advantage of her. Considering the circumstances of this case, we find that the sentence meted out was appropriate. We find no basis for this court to interfere with the same.”

4. Discontented further, the Applicant has approached this court for sentence re-hearing. He mitigates that he was a first offender whose life is greatly affected by the life imprisonment as he was a young man at the time of the act; and he has taken full advantage of the rehabilitative programmes offered in the correctional facility.



5. In considering the application, I am guided by the case of *Republic v Mwangi, Initiative for Strategic Litigation in Africa (ISLA) & 3 Others (Amicus Curiae)* Petition No. E018 of 2023 (2024) KEC 34 KLR where the Supreme Court stated that;

“The *ratio decidendi* in the decision was summarized as follows:

“

“69. Consequently, we find that section 204 of the *Penal Code* is inconsistent with the *Constitution* and invalid to the extent that it provides for the mandatory death sentence for murder. For the avoidance of doubt, this decision does not outlaw the death penalty, which is still applicable as a discretionary maximum punishment”.

We therefore reiterate that, this court’s decision in *Muruatetu*, did not invalidate mandatory sentences or minimum sentences in the *Penal Code*, the *Sexual Offences Act* or any other statute.”

6. That notwithstanding, this is a matter that was determined by the High Court which calls into play the principle of finality or *functus officio*. This court having finally exercised its authority in the case and determined the appeal following mitigation rendered before the trial court; it would have no jurisdiction to re-open the case with a view of determining the mitigation. The doctrine of “*functus officio*” was clearly stated in *Telcom Kenya Ltd v John Ochanda* (2014) eKLR. The court delivered itself thus;

“*functus officio* is an enduring principle of law that prevents the re-opening of a matter before a court that rendered a final decision.”

7. Notably, the Court of Appeal dealt with the question of conviction and sentence and dismissed the allegations put forth by the Applicant herein.
8. The upshot of the above is that I have no power to grant orders sought. Accordingly, the application is dismissed.
9. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 28TH DAY OF JANUARY, 2025.

L.N. MUTENDE

JUDGE

