



REPUBLIC OF KENYA



**Ngigi v Republic (Criminal Miscellaneous Application
E049 of 2024) [2025] KEHC 1413 (KLR) (27 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 1413 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL MISCELLANEOUS APPLICATION E049 OF 2024**

**LN MUTENDE, J
JANUARY 27, 2025**

BETWEEN

MICHAEL GITHUKU NGIGI APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. Michael Githuku Ngigi, the Applicant, was arraigned before the trial court on 13/03/2013 for the offence of Defilement contrary to Section 8(1) as read with Section 8(3) of the *Sexual Offences Act*, 2006. The particulars of the offence were that he intentionally and unlawfully caused his penis to penetrate the anus of SNK a child aged 13 years.
2. Having pleaded not guilty, he was taken through full trial, convicted and sentenced to serve twenty (20) years imprisonment.
3. Aggrieved, he appealed to the High Court which was presided over by Maureen A. Odero J. who determined the matter and concluded that;

“The Appellant was allowed an opportunity to mitigate after which he was sentenced to serve twenty (20) years imprisonment. This is the lawful and mandatory sentence in accordance with Section 8(3) of the *Sexual Offences Act*, 2006. I therefore confirm that sentence. The upshot is that this appeal fails and is hereby dismissed in its entirety.”
4. In the Notice of Motion dated 18th October, 2024, the Applicant seeks invocation of Section 333(2) of the *Criminal Procedure Code*.
5. The application is premised on grounds that the Applicant was remanded in custody during pendency of his trial, a period that wasn't considered by the trial court.



6. As afore stated, this court is of similar jurisdiction with the one that determined the appeal. The court considered the entire record, analyzed evidence afresh and was of the view that the sentence was lawful and mandatory. In the result, this court is prohibited from reviewing the sentence. It cannot purport to re-open the case. In *Firestone South Africa (Pty) Ltd v Genticuro AG* 1970 AD (4) SA 298(A) at 306 F – G the court stated as follows;

“The general principle, now established in our law is that once a court has duly pronounced a final judgment or order, it has itself no authority to correct, alter or supplement it. The reason is that it thereupon becomes *functus officio*: its jurisdiction in the case having been fully and finally exercised, its authority over the subject matter has ceased.”

7. Accordingly, this court is *functus officio*, its powers having been finally exercised. Without authority over the matter, the application fails and is accordingly dismissed.

8. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27TH DAY OF JANUARY, 2025.

L.N. MUTENDE

JUDGE

