



REPUBLIC OF KENYA



**Ithalie v Republic (Criminal Revision E263 of 2024)  
[2025] KEHC 7639 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7639 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL REVISION E263 OF 2024**

**HM NYAGA, J  
MAY 29, 2025**

**BETWEEN**

**RICHARD MBAABU ITHALIE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. A brief background to the matter is that the applicant was arraigned before this court in Criminal case Number 98 of 2009 on a charge of murder contrary to section 203 as read with section 2024 of the [Penal Code](#). After a full trial, he was convicted on the said offence and was sentenced to death.
2. The applicant then appealed to the Court of Appeal but his appeal was dismissed.
3. After the decision in [Francis Karioko Muruatetu and another v Republic](#) (2017) eKLR was delivered on 14<sup>th</sup> December 2017, the applicant moved this court vide Petition Number 168 of 2018, in which he sought a re-sentencing. The court heard his application and on 3<sup>rd</sup> June, 2020 he was sentenced to twenty(20) years imprisonment.
4. In passing the sentence, the court (A. Mabeya,J) noted that he had considered the fact that the accused had been in custody from 2008 and ordered that the sentence would run from 11<sup>th</sup> November 2014, when he was first sentenced by the court.
5. The applicant has now moved this court vide an undated Application in which he seeks orders that;
  - a. That this honourable court be pleased to allow his application under section 333(2) of the [Criminal Procedure Code](#)(CPC).
  - b. That this honourable court be pleased to admit and give any other orders that deem just in the circumstances of the petition.



6. The prosecution's brief response was that this court does not possess the jurisdiction to entertain the application.
7. The question to be answered is whether this court, having sentenced the applicant, has jurisdiction to revisit the sentence.
8. It is well settled law is that jurisdiction is everything. The Court of Appeal in *Owners of the Motor Vessel Lilian 'S' v. Caltex Kenya Limited* (1989) KLR 1) was held as follows;

“Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.... Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”

9. The doctrine of functus officio is well settled. In short, once a court has exhausted its jurisdiction over an issue or matter, it cannot go back to the same issue or matter.
10. The doctrine was explained by the Supreme Court of Kenya in the case of *Raila Odinga & 2 Others vs Independent Electoral & Boundaries Commission & 3 Others* [2013] eKLR, which cited with approval an excerpt from an article by Daniel Malan Pretorius entitled, “*The Origins of the Functus Officio Doctrine, with Special Reference to its Application in Administrative Law*” (2005) 122 SALJ 832 which reads: -

“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.”

11. It is my opinion that after the delivery of the sentence, on re-sentencing, this court became functus officio.
12. Even as a court with unlimited jurisdiction, save as may be limited under the *Constitution*, this court cannot assume any other jurisdiction not intended by the said Constitution. Once it has discharged its mandate, its powers end at that point.
13. If the Applicant was aggrieved by the said sentence, then the next cause was to appeal to the Court of Appeal and not revert back to this court.
14. This position was also taken by the court in *Mark Mutwiri Mbogo v Republic* [2022] eKLR, where it held as follows;

‘Article 50(2) of the *Constitution* gives the right to every accused person of a fair trial which includes:-

- a. “If convicted, to appeal to, or to apply for review by, a higher court as prescribed by law.”

The foregoing provision rules out the intervention of the High Court to review the orders of another judge in a criminal case.

Among the sentence issues for consideration on appeal before the High Court and which it dealt with were whether the conviction was safe and whether the sentence was commensurate to the offences.



The Scope of consideration of sentence includes the application by the trial court of Section 333(2) of the *Criminal Procedure Code*. It is clear that the High Court dealt with the issue of sentence review on appeal.

Consequently, I am of the considered view this court lacks jurisdiction to entertain this application.

The application is hereby struck out for want of jurisdiction.'

15. In my opinion, the applicant, in making the present application, is merely attempting to try his luck a second time, but this cannot be allowed.
16. This application is not an isolated case. There has been an avalanche of similar applications by convicts, despite the fact that they have already been dealt with by this court.
17. If the Judiciary does not act soon, there will arise, if that has not happened already, a situation where one applicant files multiple applications either in the same court or in different courts and the same will be handled by different Judges who will give differing decisions over the same matter. This is likely to happen when new High Court stations are opened. For instance, this court was previously handling matters emanating from Isiolo County. There is now a High Court at Isiolo. An applicant who was sentenced by a court within that county, and who has already been dealt with by this court will easily file another application before Isiolo High Court and fail to disclose that he has been dealt with by this court. If a different order is issued by that court, this will be an embarrassment to the Judiciary.
18. Therefore, there is need to have such applications registered vide a unique mode on the Judiciary's e-filing system so that this problem is managed.
19. In my opinion one way to curb this menace would be for the Judiciary's ICT Directorate to open a Central e-Register for all resentencing and related applications, accessible for viewing by all the High Court stations. The system ought to be configured so that it flags any application that is made by an applicant who has been to court before with a similar application.
20. As for the matter before me, the application is struck out for want of jurisdiction.

**DATED, SIGNED AND DELIVERED IN MERU THIS 29<sup>TH</sup> DAY OF MAY, 2025.**

**H.M. NYAGA**

**JUDGE**

