



**Mwiti v Republic (Criminal Petition E057 of 2024)
[2025] KEHC 7640 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7640 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL PETITION E057 OF 2024
HM NYAGA, J
MAY 29, 2025**

BETWEEN

ERICK MWENDA MWITI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant arraigned before this court in Criminal case Number 42 of 2015 on a charge of murder contrary to section 203 as read with section 2024 of the *Penal Code*.
2. Subsequently, the applicant entered into a plea agreement with the State, which was accepted by the court. The charges were then reduced to manslaughter, contrary to section 202 as read with section 205 of the *Penal Code*.
3. On 20th November 2019, he was sentenced to twenty (20) years imprisonment. The court stated that it had considered the manner in which the offence was committed and the time that the applicant had spent in custody, and ordered that the sentence would commence on that date of the sentence.
4. The applicant moved this court vide an Application dated 7th March 2024, in which he seeks orders that;
 - a. That this honourable court be pleased to review the sentence by computation of the period spent in remand into the thirty (30) years that he is currently serving.
 - b. That this honourable court be pleased to grant the applicant probation orders if the circumstances fit.
5. The brief response from the prosecution is that this court has no jurisdiction to review its own sentence.



6. On jurisdiction the court is definitely aware of the finding of the Court of Appeal in Owners of the Motor Vessel Lilian 'S' v. Caltex Kenya Limited (1989) KLR 1) where it 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.”

7. The question to be answered is whether this court, having sentenced the applicant to a sentence that was not mandatory, has the requisite jurisdiction to revisit the sentence.
8. It is my opinion that after the delivery of the sentence, this court became functus officio. Therefore it does not have jurisdiction to look into the matter again.
9. The doctrine of functus officio 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.”

10. 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.
11. 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.
12. 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.’

13. In view of the foregoing, the application is struck out for want of jurisdiction.

DATED, SIGNED AND DELIVERED IN MERU THIS 29TH DAY OF MAY, 2025.

H. M. NYAGA

JUDGE

