



**Nthama v Republic (Miscellaneous Criminal Application
E138 of 2024) [2025] KEHC 7642 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7642 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
MISCELLANEOUS CRIMINAL APPLICATION E138 OF 2024**

RC RUTTO, J

MAY 29, 2025

BETWEEN

JOHN KIOKO NTHAMA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court for determination is a Notice of Motion Application dated 17/12/2024 seeking that mitigation and a sentence review. The Application is supported by the grounds on the face of the application namely that; the applicant was tried and convicted to serve a life imprisonment on 2nd October 2015; he appealed to the High Court vide Machakos Criminal Appeal No 129 of 2015 which was dismissed on 28th November 2018. He lodged an appeal before the Court of Appeal at Nairobi in 2018 and since then no communication has been received; he has been in prison since date of arrest in December 2012 and has undergone various rehabilitation programs; he seeks a lenient sentence that puts into account the time spent in custody as per section 333(2) of the *Criminal Procedure Code*.
2. The application is also supported by an affidavit deposed by the Applicant wherein he reiterates the grounds on the face of the application.
3. On 10th March 2025, the Application was canvassed by way of oral submissions wherein the applicant stated that he was growing old and was medically unfit. That he suffers most during the cold seasons because of his illness. Further, that he was losing his eyesight and thus he prayed that his application be allowed, and his sentence be reviewed to a more lenient sentence which will take into account the provisions of section 333(2) of the Civil Procedure Code.
4. In response, the respondent opposed the application on the grounds that the court had no jurisdiction to determine it since it was res judicata having already been determined by the High Court on Appeal and that there was already a matter pending before the Court of Appeal.



5. The Respondent relied upon the case of C.K. Bett Traders Limited & 2 others vs Kennedy Mwangi & Another [2021] eKLR to urge that once a matter is determined by a court the court will not have jurisdiction to entertain the same matter. Thus, they urged the court to dismiss the application to enable the applicant pursue the matter before the Court of Appeal.

Analysis & Determination

6. I have considered the Application and the rival submissions of the parties and find that the issue for determination is whether this court has jurisdiction to review the sentence of life imprisonment.
7. The applicant was charged and found guilty with the offence of defilement contrary to section 8 (1) as read together with 8(2) of the *Sexual Offences Act* in Machakos Criminal Case No 1528 of 2013 and sentenced to serve life imprisonment.
8. Aggrieved by the decision that found him guilty and sentenced him to life imprisonment he appealed to the High Court and the High Court on 28/11/2018 delivered its decision upholding both the conviction and sentence. The applicant now seeks a sentence review.
9. I am guided by the finding of the court in Jersey Evening Post Limited v Al Thani [2002] JLR 542 at 550 where the concept of functus officio was explained thus;

“A court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors nor does it prevent a judicial change of mind even when a decision has been communicated to the parties. Proceedings are only fully concluded, and the court functus, when its judgment or order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are finally concluded, the court cannot review or alter its decision; any challenge to its ruling on adjudication must be taken to a higher court if that right is available.”

10. Guided by the above this Court cannot sit to review/appeal a judgment or decision of another judge of concurrent jurisdiction. The applicant’s recourse lies in the Court of Appeal on a second appeal. Secondly and in the alternative, the matters raised in this application could be raised in a Petition to the president under Article 133 of *the Constitution* as well as under the *Power of Mercy Act*. (See the case of Sianyoy Atembe versus Republic (Criminal Revision 194 of 2023) (2023) KEHC 26456 (KLR) 5th December 2023 Ruling).
11. In view of the above this Court has no powers to interfere with a decision rendered by a court of concurrent jurisdiction. It can only interfere with sentence of a subordinate court on appeal or revision.
12. Having found that the court has no jurisdiction as it is functus officio, then it must immediately drop its tools. In the end, the Application is found to be without merit and the same is dismissed.
13. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 29TH DAY OF MAY, 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....for Applicant

.....for Respondent



