



**Achoki v Republic (Miscellaneous Criminal Application  
1 of 2022) [2024] KEHC 5802 (KLR) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 5802 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
MISCELLANEOUS CRIMINAL APPLICATION 1 OF 2022**

**WA OKWANY, J**

**APRIL 25, 2024**

**BETWEEN**

**GEORGE MORARA ACHOKI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant herein initially filed the Application that is the subject of this ruling before the High Court at Kisumu before it was transferred to this court. The Application is for review of sentence and is premised on Section 333 (3) of the *Criminal Procedure Code*. The Applicant states that the period that he spent in custody while awaiting his trial should have been computed and deducted from his sentence period.
2. The record shows that the Applicant was convicted for the offence of Robbery with Violence and subsequently sentenced to serve 10 years' imprisonment. On Appeal before Kisii High Court in Criminal Appeal No. 94 of 2011, the sentence was enhanced to a death sentence. He however later appealed to the Court of Appeal at Kisumu where the sentence was reduced to 24 years imprisonment.
3. He now seeks a revision of the sentence while stating that he was arrested on 23<sup>rd</sup> November 2008 and convicted on 11<sup>th</sup> December 2009 and that bail pending trial was not available to accused persons facing capital charges prior to the promulgation of the *Constitution* in 2010. He contends that he spent the whole trial period custody.
4. At the hearing of the Application, the Respondent submitted that sentence was already reviewed by the Court of Appeal when it was reduced from death sentence to 24 years' imprisonment.
5. The main issue for determination is whether this Application has merit.



6. The powers of the High Court on review are provided for under Article 165 of the *Constitution*, Section 362 and 364 of the *Criminal Procedure Code* as follows: -

Article 165

- (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
- (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

Sections 362 and 364 of the *Criminal Procedure Code*: -

362. Power of High Court to call for records

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

364. Powers of High Court on revision

- (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may —
- (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
- (b) in the case of any other order other than an order of acquittal, alter or reverse the order.
- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

7. The above provisions stipulate that the High Court can only exercise revisionary powers over subordinate courts and not superior courts or courts of equal status.
8. It is evident that there was already a judgment rendered by the High Court of Kenya at Kisii in which sentence was enhanced to death sentence. At a subsequent appeal to the Court of Appeal at Kisumu, the sentence was reduced to 24 years imprisonment. This court therefore became functus officio the



moment judgment was entered by the High Court of Kenya Kisii and further, when an appeal was lodged before the Court of Appeal at Kisumu.

9. I therefore find that this court does not have the jurisdiction to entertain relating to the same case or to revise a sentence passed by the Court of Appeal, which according to the hierarchy of courts is a court of superior jurisdiction.
10. The import of 'functus officio' was explained in *Jersey Evening Post Limited v Al Thani* [2002] JLR 542 at 550 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.”

11. In *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* (1989) KLR 1 it was held: -

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. 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 tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

12. In the end, I find that the instant application is not merited and I therefore dismiss it.
13. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NYAMIRA VIA MICROSOFT TEAMS THIS 25<sup>TH</sup> DAY OF APRIL 2024.**

**W. A. OKWANY**

**JUDGE**

