



**Odhiambo v Republic (Criminal Petition E024 of 2023)
[2024] KEHC 13281 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13281 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL PETITION E024 OF 2023
DK KEMEL, J
OCTOBER 31, 2024**

BETWEEN

GEORGE ONYANGO ODHIAMBO APPLICANT

AND

REPUBLIC RESPONDENT

(Being an Application for Sentence Review from Sentence in the SPM's Court of Siaya in Criminal Case No. 74 of 2013 dated 10/1/2014 and delivered by Hon. M.O. Kimani (RM))

RULING

1. The applicant, George Onyango Odhiambo has moved this court by way of a Notice of Motion Application dated 30/5/2023 brought under Article 160, 50 (Q) 2 and 27 of the Constitution and also Sections 216, 329 and 333 (2) of the Criminal Procedure Code. The same seeks that this court reviews the life sentence imposed upon the applicant. The affidavit in support of this application is sworn also on 30/5/2023 and in it, the applicant deposes that he was charged, and convicted of the offence of defilement contrary to Section 8 (1) as read with Section 8 (2) of the Sexual Offences Act. He was then sentenced to life imprisonment. The applicant now submits that his appeal against the conviction and sentence was dismissed by the High Court. It is his further submissions that the mandatory sentence did not take into account his mitigation and was discriminatory. He has further pleaded that he has reformed and ready for reintegration back to the society.
2. In response, the Respondent has submitted that this court is functus officio in this matter, the High Court having dealt with the issues raised and dismissed the Applicant's appeal.
3. I have considered this application and the submissions made by the parties. I have also considered the record of proceedings both of the trial court and the High Court on appeal. The issue for determination is whether the application has merit.



4. The appellant was sentenced to life imprisonment following his conviction for the offence of defilement contrary to Section 8(1) as read with Section 8 (2) of the *Sexual Offences Act*, No. 3 of 2006. This was on 7/8/2015. He then filed High Court Criminal Appeal No. 70/2016, which appeal was dismissed in its entirety in a judgment delivered on 30/1/2017.
5. Vide this application, the applicant is now seeking for a determinate sentence on grounds that the life sentence imposed results in gross disregard of the right to dignity as enshrined under Article 27(1) of the *Constitution*. The Respondent has not made any substantive response to this application, only maintaining that the court is functus officio in this matter.
6. It is instructive that the Applicant has not exhausted his chances on appeal to the Court of Appeal which is the right forum for him to agitate his grievance if aggrieved by this court's dismissal of his appeal. I decline the invitation by the Applicant to attempt to sit on appeal on a matter that this court has already determined and as such this court is already functus officio.
7. In the result, it is my finding that the Applicant's application dated 30/5/2023 lacks merit. The same is dismissed in its entirety.

DATED AND DELIVERED AT SIAYA THIS 31ST DAY OF OCTOBER, 2024

D. KEMEI

JUDGE

In the presence of :

George Onyango Applicant

Ms Kerubo for Respondent

Ogendo Court Assistant

