



REPUBLIC OF KENYA



**Opondi v Republic (Miscellaneous Criminal Petition 37 of 2023)
[2024] KEHC 13386 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13386 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL PETITION 37 OF 2023**

**DK KEMEL, J
OCTOBER 31, 2024**

BETWEEN

JULIUS ODUOR OPONDI APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application arising from judgment, conviction and sentence in Ukwala SRM's Court Sexual Case No. 20 of 2018 delivered on 13/8/2018 by Hon. G. A. Adhiambo, Senior Resident Magistrate AND Siaya High Court Criminal Appeal No. 40 of 2018)

RULING

1. The applicant herein has filed an application dated 12th April, 2023 principally seeking for a review of sentence.
2. The applicant's gravamen is inter alia; that he was convicted and sentenced to serve life imprisonment vide Ukwala Sexual Offence Case No 20 of 2018; that he lodged an appeal at Siaya High Court vide Criminal Appeal No 40 of 2018 wherein his sentence was reviewed to a period of 75 years imprisonment; that the said sentence is still harsh and excessive yet the applicant was a first offender who is now reformed and rehabilitated; that the applicant has undergone various spiritual courses; that the sentence of 75 years be reduced to a lesser sentence or any other that the court may deem fit and just.
3. There was no response by the respondent to the application.
4. I have given due consideration to the application. It is not disputed that the applicant was duly convicted and sentenced to life imprisonment vide Ukwala SRM's Court Sexual Offence Case No 20 of 2018.

It is also not in dispute that the applicant lodged an appeal to this court vide Criminal Appeal No 40 of 2018 which was duly considered and that he was re-sentenced to serve 75 years imprisonment.



It is also not in dispute that the applicant later on filed an application No 116 of 2022 at Siaya High Court wherein he sought to challenge the sentence of 75 years imprisonment as being unconstitutional and which was dismissed by Justice Aburili. On 23/9/2022, the learned judge found the applicant's quest for a further resentencing lacked merit. That being the position, I find the singular issue for determining is whether the application has merit.

5. It is clear that the applicant is playing lottery with the courts. Indeed, when this court resented him to 75 years imprisonment, this court became *functus officio* and that the applicant ought to have moved to the Court of Appeal for redress if he felt aggrieved by the sentence imposed. The applicant has not given reasons as to why he has not moved to the Court of Appeal rather betrays him on his quest to try and receive audience before this court despite having been attended to on two occasions. This court has already substantively dealt with the issue of sentence and thus by seeking further revision from this court, the applicant is asking this court to sit on appeal on its own decision. This court is already *functus officio*.
6. In view of the foregoing observations it is my finding that the applicant's application dated 12/4/2023 lacks merit. The same is dismissed.

DATED, SIGNED AND DELIVERED THIS 31ST DAY OF OCTOBER, 2024.

D. KEMEI

JUDGE

In the presence of:

Julius Apondi Applicant

Ms. Kerubo for Respondent

Ogendo Court Assistant

