



**Abonyo v Republic (Criminal Miscellaneous Application E030 of 2023)
[2024] KEHC 16348 (KLR) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16348 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL MISCELLANEOUS APPLICATION E030 OF 2023**

**DK KEMEL, J
DECEMBER 20, 2024**

BETWEEN

YUSUF ABDI ABONYO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein Yusuf Abdi Abonyo is a convict for the offence of defilement contrary to Section 8(1) as read with Section 8 (4) of the [Sexual Offences Act](#). He was sentenced to serve 30 years imprisonment on 23/3/2017 vide Siaya CM’s SO Case No. 37/2019.
2. The application is supported by grounds on the face thereof and by a supporting affidavit of the Applicant. The grounds are inter alia; that upon conviction and sentence by the lower court, he moved to the High Court vide Siaya HCCRA 37/2019 which was dismissed; that he has not lodged an appeal at the Court of Appeal.
3. The application was canvassed by way of written submissions. The applicant submitted that he should be placed on a least severe sentence namely, on probation as he has served a substantial part of the sentence and that he should be released back to the society. He now seeks for consideration to rejoin his family and community as he was the sole bread winner for his family; that he is now rehabilitated fully and merits an order for probation.
4. It was submitted by the Respondent that the application is incompetent and should be struck out for being improperly before this court as this court had already dealt with the same.
5. I have carefully considered the Applicant’s application and the written submissions by the Applicant.



6. The Applicant has not disputed that he exercised his right of appeal wherein he should have raised all issues to do with sentence. He submits that he has been reformed hence he should be set free to serve probation under the Community Service Orders Act.
7. The Respondent's counsel opposed the application on the grounds that the applicant had lodged an appeal at this High Court rendering this court functus officio.
8. I have considered the applicant's application and the written submissions. Indeed, the applicant's application seeks for revision of sentence. As this court had dealt with the earlier appeal case, it cannot again sit on its own appeal and purport to determine the latest application owing to the principle of functus officio. Again, the Applicant has not confirmed that he did file an appeal to the Court of Appeal where all his concerns could be further addressed. His conduct in coming back to this court yet it has already determined his appeal must be frowned upon.
9. The term "functus" is defined at page 840 of Jowitts Dictionary of English Law 2010 Edition as: -

"functus officio (having discharged its duty), an expression applicable to a Judge, magistrate or arbitrator who has given a decision made an order of award so that his authority is exhausted."
10. In the matter before me, the applicant on his own words admitted that his appeal in Siaya HCCRA 37/2019 was duly dismissed by this court. It is noted that the Applicant had lodged a similar application vide Siaya High Court MISC. Criminal Application No. E065/2022 which was dismissed by Aburili J on 20/6/2022. Putting this in mind, and having noted that a decision had already been rendered by this court, then the court is functus officio in this regard and that it cannot purport to sit on appeal regarding matters that it had already determined. The courts and the appeal system must be adhered to by the applicant. He should not play lottery with the courts.
11. In light of the foregoing, it is my finding that the applicant's application dated 8/3/2023 lacks merit. The same is dismissed.

DATED AND DELIVERED AT SIAYA THIS 20TH DAY OF DECEMBER, 2024

D. KEMEI

JUDGE

In the presence of:

Yusuf Abdi Abonyo.....Applicant

Mocha.....for Respondent

Ogendo.....Court Assistant

