



**Amuno v Republic (Criminal Miscellaneous Application E032 of 2024)
[2024] KEHC 16111 (KLR) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16111 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL MISCELLANEOUS APPLICATION E032 OF 2024**

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

BETWEEN

ENOCK ONYANGO AMUNO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein Enock Onyango Amuno has filed an application dated 16/4/2024 seeking a review of his sentence to a lesser period and or non-custodial sentence.
2. The Applicant’s gravamen is inter alia; that he was convicted vide Siaya CRC No. 390/2020 for the offence of grievous harm contrary to Section 234 of the Penal Code wherein he was sentenced to serve two years’ imprisonment.
3. The Applicant being aggrieved by the conviction and sentence of the trial court, he exercised his rights by lodging an appeal to the High Court vide Siaya High Court Criminal Appeal No. E005/2021 which appeal was dismissed and his sentence was enhanced to 15 years’ imprisonment vide judgment dated 7/4/2021 by Aburili, J. It should be noted that the Applicant further moved to the Court of Appeal after the enhancement of his sentence by filing a Notice of Appeal to the Court of Appeal against the decision rendered by the High Court vide a Notice dated 1/3/2022 whose its outcome is still unknown.
4. 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 regrets his actions and that he is remorseful and has been reformed hence he should be set free to serve probation under the *Community Service Orders Act*.
5. The Respondent’s counsel opposed the application on the grounds that the Applicant had already lodged an appeal to the Court of Appeal rendering this court functus officio.



6. 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*. The conduct of the Applicant in coming back to this court yet it has already determined his appeal must be frowned upon. It is instructive that the Applicant has not informed this court as to what became of his appeal at the Court of Appeal.
7. 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.”
8. The Applicant has by his own words confirmed that he has lodged an appeal to the Court of Appeal but has not indicated whether the said appeal is still pending or concluded. If it is still pending, then the Applicant should wait for its determination. On the other hand, should it have been concluded, then the Applicant should be content with it and ought not to come back to this court as it is already *functus officio*. It is clear that the Applicant is playing lottery with the court which cannot be countenanced.
9. In light of the foregoing observations, it is my finding that the Applicant’s application for revision of sentence lacks merit. The same is dismissed.

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

D. KEMEI

JUDGE

In the presence of:

Enock Onyango Omono.....Applicant

Mocha.....for Respondent

Ogendo.....Court Assistant

