



**Omollo v Republic (Criminal Miscellaneous Application E046 of 2024)
[2024] KEHC 16112 (KLR) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16112 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL MISCELLANEOUS APPLICATION E046 OF 2024**

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

BETWEEN

JOSEPH OWINO OMOLLO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein Joseph Owino Omollo has filed an application dated 4/6/2024 seeking principally for an order that his sentence be reviewed.
2. The application is supported by grounds on the face thereof and a supporting affidavit sworn on even date.
3. The application was canvassed by way of oral submissions. The applicant submitted that he should be placed on probation. He confirmed that he had been charged with an offence of defilement at Siaya Law Courts and sentenced to life imprisonment. That he has so far served four years and four months. That he has learnt a lot of things while in custody and that he now seeks for consideration to rejoin his family and take care of them. That he is now rehabilitated fully and merits an order for probation.
4. The Respondent's counsel opposed the application on the grounds that the sentence imposed is a legal one worthy of a charge of defilement.
5. I have given due consideration to the application and the brief oral submissions. It is not in dispute that the applicant was found guilty and convicted 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 and sentenced to serve life imprisonment vide Siaya CM's Court Cr. 539 of 2016. It is also not in dispute that the applicant later filed an appeal on both conviction and sentence vide Siaya High Court Criminal Appeal No. 55 of 2016 wherein the appeal against conviction was dismissed but the appeal against sentence was allowed and that the sentence of life imprisonment was substituted with a prison term of 75 years to be calculated from the



date of the applicant's arrest namely 3/6/2016. Further, the Applicant confirms that he did lodge an appeal to the Court of Appeal and which was dismissed in 2019.

6. It is noted that the applicant has exercised his options as deemed fit. He has now preferred the present application seeking for review of sentence.
7. This court having already decided on the applicant's appeal in Siaya HCCRA No. 55 of 2016, this court thus became functus officio and that the applicant moved to the Court of Appeal as he was aggrieved. The said Court of Appeal has since dismissed his appeal. It is trite that a court cannot rehear an application on the same case it had heard and determined before. As this court had dealt with his appeal which was decided and rendered on 7/10/2019 by Justice Aburili, it cannot again sit on its own appeal and purport to determine the latest application owing to the principle of functus officio.
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 since he was not satisfied with the lower court decision, he moved the High Court by an appeal SIAYA HCCRA NO. 55/2016 and a decision was rendered dismissing conviction while substituting the life imprisonment with 75 years' imprisonment. As a decision has been rendered by this court, then the court is functus officio in this regard and that it has no jurisdiction to deal with it. 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 4th June, 2024 lacks merit. The same is dismissed.

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

D. KEMEI

JUDGE

In the presence of

Joseph Owino Omollo.....Applicant

Mocha.....For Respondent

Ogendo.....Court Assistant

