



Okuwa & another v Inspector General of Police Service & 2 others (Miscellaneous Criminal Application E059 of 2023) [2023] KEHC 24104 (KLR) (25 October 2023) (Ruling)

Neutral citation: [2023] KEHC 24104 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION E059 OF 2023
RE ABURILI, J
OCTOBER 25, 2023**

BETWEEN

ISAIAH OPONDO OKUWA 1ST APPLICANT

SAMWEL AFWANDE OKUWA 2ND APPLICANT

AND

INSPECTOR GENERAL OF POLICE SERVICE 1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS 2ND RESPONDENT

THE HON ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. Before me is an application dated October 18, 2023 filed under Certificate of Urgency by Isaiah Opondo Okuwa and Samuel Afwande Okuwa.
2. The two applicants are the family members of the deceased Bartholombo Okuwa Wanyado.
3. The Respondent is one Clement Festo Ochieng who was convicted of the Murder of Bartholombo Okuwa Wanyado and sentenced to death vide Kisumu HCCR No. 77 of 2003. He served 16 years in prison before he petitioned for resentencing vide HC Petition No. 43 of 2018.
4. On May 27, 2019, Hon. F. A. Ochieng J resentenced the Respondent herein to Probation for 3 years and further directed/ordered the Convict to keep away from the place where the crime was committed.
5. What is before me is an application seeking for arrest of the Convict on account that he has breached the probationary terms by threatening to kill witnesses who testified against him and that he has refused to move away from the area where the crime of murder was committed.
6. I have considered the application and the supporting affidavit. The issue for determination is whether the application is merited.



7. In my humble view, the Respondent having served Probation and completed the term on May 27, 2022, this court becomes functus officio as far as alleged breach of Probationary terms or orders made on May 27, 2019 are concerned.
8. This court had supervision over the convict only before he completed probation. Any act or omission done after May 27, 2022 in breach of the Probationary terms which include the threats to witnesses is a separate and new offence that can only be dealt with by the police investigating the threats as alleged and preferring appropriate charges against the offender.
9. In addition, the order to stay away from the area where the crime of murder was committed was part of the resentence order placing the convict on probation and this court cannot enforce compliance after lapse of the probationary period.
10. In the circumstances, I find and hold that this court has no jurisdiction to grant the orders sought in the application dated October 18, 2023 which is hereby struck out and this file is closed.
11. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 25TH DAY OF OCTOBER, 2023.

R. E. ABURILI

JUDGE

