



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. CRIMINAL APPPL. NO. 6 OF 2020

EVANS ONYANGO MOMANYI APPLICANT

-VERSUS-

REPUBLIC RESPONDENT

JUDGMENT

The Applicant, **EVANS ONYANGO MOMANYI**, lodged his current Petition at the High Court, seeking a review of the sentence which was handed down by the trial court.

1. He was convicted for the offence of Defilement and was sentenced to 20 Years imprisonment.
2. Following his conviction, the Applicant lodged an appeal at the High Court, challenging both the conviction and the sentence.
3. On 7th February 2018 Majanja J. dismissed the appeal and affirmed both the conviction and the sentence.
4. The Applicant has now approached this court to intervene and award a less severe sentence, after taking into account the reforms which he had undergone from the time he was incarcerated.
5. Whilst I was in the process of perusing all the material which the Applicant had placed before me, I chanced upon the Record of Appeal in respect to Criminal Appeal No. 9B of 2017, which was determined by Majanja J.
6. On the front page of the said Record of Appeal, I noted the following hand-written statement;

“COA CRA 21/2018”

7. Being aware that the initials “COA”ordinarily is used to refer to the Court of Appeal, I got in touch with the learned Deputy Registrar of that court.
8. After making some inquiries, Hon. J. Wambilyanga informed me that the Applicant had filed **Criminal Appeal No. 21 of 2018**, at the Court of Appeal.
9. The information made available to me shows that on 26th October 2020, the learned Deputy Registrar had conducted Case Management for the pending appeal.
10. The appeal has now been certified as being ready for hearing. In the said circumstances, it shows that the Applicant currently has an appeal which is pending at the Court of Appeal, whilst he was simultaneously canvassing an application for the review of the sentence that had been handed down by the trial court.
11. The record of the proceedings at the Case Management on 26th October 2020 shows that the Applicant was present on that day. Therefore, he was fully aware of the fact that his appeal was still pending.
12. I hold the considered view that by pursuing the review of the sentence at the High Court, whilst simultaneously canvassing an appeal at the Court of Appeal, the Applicant was guilty of an abuse of the Court process. I so hold because it is conceivable that the 2 courts could come up with inconsistent determinations, and thus bring the justice system into disrepute.
13. As the appeal was filed first-in-time, the Applicant ought to canvass it to finality, unless he chooses to have it withdrawn.

14. In order to ensure that there is no risk of the two courts making decisions that may be inconsistent, I do hereby strike-out the application before me.

15. As I conclude this judgment, I wish to caution inmates against filing more applications or petitions when they still had a pending case or pending appeal which arose from the same facts and trial.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 27TH DAY OF MAY 2021

FRED A. OCHIENG

JUDGE