

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

MISC. CRIMINAL NO. 36 OF 2018

(CORAM: R. E. ABURILI - J.)

STEPHEN ODUOR ODAWA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal against the sentence dated 18/09/2014 in Criminal Case No. 34 of 2014 at UKWALA Law Courts before R.M. Oanda, Ag. PM)

And

(A Subsequent Judgment that was made on 23/3/2017 in Criminal Appeal No. 39 of 2015 at Siaya High Court before Hon. Justice J.A. Makau, Judge)

RULING

This matter is coming before this court for the third time. On 23/3/2017, Hon. Justice J.A. Makau dismissed HCCRA No. 39 of 2015 **Stephen Oduor Odawa Vs Republic** arising from Ukwala SRM Cr. Case No. 34 of 2014, on the ground that the Appellant was properly convicted and sentenced by the trial court and secondly that the Appeal was **Res judicata** Kisumu HCRA No. 121 of 2014 Stephen Oduor Odawa which was heard and determined and dismissed by a court of competent jurisdiction.

The Learned Judge made it clear that the Appellant should have filed his further Appeal to the Court of Appeal and not the same High Court. He held that the Appeal was therefore incompetent and struck it out. That was on 23/3/2017.

The Appellant convict did not heed the advice of the Learned Judge. He has once more dared to return to this court vide a different **Misc. Cr. Application File No. 36 of 2018** after learning that Hon. J.A. Makau J has left the station and now he purports to seek for leave to appeal to the Court of Appeal out of time and as a pauper under **Rule 113 of the Court of Appeal Rules**.

This court notes that albeit the applicant seeks to challenge the judgment of Hon. Makau J dated 23/3/2017, he forgets that the said judgment simply struck out the Appeal No. 39/2015 on account that it was **Res judicata** Kisumu HCRA 121/2014.

Accordingly, I find that as the application does not seek to challenge the merits of the appeal namely Kisumu HCRA 121/2014 which determined his appeal on merit, the same is misplaced and misconceived.

The application filed on 3/7/2018 is hereby dismissed.

This file is closed for archiving purposes.

Dated, Signed and Delivered at SIAYA this 31st Day of October 2018.

R.E. ABURILI

JUDGE