



**Asol v Republic (Miscellaneous Criminal Application
E118 of 2024) [2025] KEHC 525 (KLR) (17 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 525 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION E118 OF 2024**

**DK KEMEL, J
JANUARY 17, 2025**

BETWEEN

HAGGAI ASOL APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein Haggai Asol has filed the present application dated 16/9/2024 seeking for review of sentence. The Applicant’s case is that he was sentenced to serve ten years imprisonment for an offence of rape contrary to Section 3 (1) as read with Section 3 (3) of the *Sexual Offences Act* No 3 of 2006 vide Madiany Senior Resident Magistrate Court, Cr. No SO E006 of 2023. That he lodged an appeal at Siaya High Court which was dismissed and that he now approaches this court for intervention.
2. I have considered the application. It is not in dispute that the Applicant was convicted and sentenced to serve ten years’ imprisonment vide Madiany SRMCC SO E006 of 2023. It is also not in dispute that the Applicant subsequently lodged an appeal vide Siaya HCCRA No E020 of 2023 which was dismissed on 11/4/2024. It is not in dispute that upon the determination of the Applicant’s appeal, this court became functus officio and that the Applicant’s next course of action, if aggrieved was to lodge appeal to the Court of Appeal. No reasons have been given by the Applicant to why he has not approached the Court of Appeal for redress. The Applicant’s present application is meant to force this court to sit on appeal in a matter which it had determined. This is untenable. The conduct of the Applicant in seeking to have a second bite at the cherry must be rejected since this court is already functus officio. He should move to the Court of Appeal for redress if need be. Further were this court to have jurisdiction to entertain the matter, then the application would not see the light of day for the simple reasons that the Applicant had raped a mentally challenged woman and that the sentence of ten years is the minimum possible in law. The Supreme Court decision in Petition No 18 of 2023 *R v Stephen Gichuki & another* (2024) eKLR, has left no doubt that the operation of the minimum sentences under the *Sexual Offences Act* is lawful until the said Act is declared as unconstitutional.



3. In the result, I do not find any merit in the Applicant's application dated 16/9/2024. The same is dismissed.

DATED AND DELIVERED AT SIAYA THIS 17TH DAY OF JANUARY 2025.

D. KEMEI

JUDGE

In the presence of:

Haggai Asol.....Applicant

M/s Kerubo.....for Respondent

Mboya.....Court Assistant

