



**Gwada v Republic (Criminal Petition E027 of 2023)
[2025] KEHC 420 (KLR) (20 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 420 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL PETITION E027 OF 2023
DK KEMEL, J
JANUARY 20, 2025**

BETWEEN

KERREY ODHIAMBO GWADA PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The Petitioner herein Kerry Odhiambo Gwada has filed the present application dated 19/12/2024. He has averred that he was arrested and charged for an offence of defilement contrary to Section 8 (1) as read with Section 8 (4) of the *Sexual Offences Act* No. 3 of 2006 and sentenced to serve 15 years imprisonment vide Siaya MCCRC No. 119 of 2016. That he later lodged an appeal at the High Court vide Siaya HCCRA No. 82/2017 seeking review of sentence which was dismissed and that he was ordered to continue serving the 15 years imprisonment imposed. That upon dismissal of his appeal, he did not move to the Court of Appeal to date. That he now seeks for further sentence review of his sentence. That this Court considers the time he spent in custody as part of his sentence.
2. Learned counsel for the Respondent did not file a response and has left the matter to court.
3. I have given due consideration to the application. The Petitioner has clearly told this Honourable Court that he lodged an appeal at the High Court against the conviction and sentence of the lower court's decision in this court and which was dismissed and that he did not pursue the same at the Court of Appeal. Indeed, the Petitioner seeks revision of sentence. The issue for determination is whether the application has merit. It is not in dispute that the Petitioner had moved this court vide Siaya HCCRA No. 87 of 2016 seeking for review sentence of the lower court's decision and a decision was made by this court in which it dismissed the request for revision and ordered the Applicant to continue serving the sentence imposed. It should be noted that since this court had already determined the same issue earlier on, this renders this court functus officio. The conduct of the applicant in coming back to this court yet it had already determined his appeal must be frowned upon. It seems the Petitioner is playing



lottery with the courts which cannot be countenanced. The Petitioner having approached this court via his appeal and having decided not to pursue the same at the Court of Appeal for his own reasons, this court cannot again sit on its own appeal and purport to determine the latest application owing to the principle of *functus officio*. The Petitioner must obey the hierarchy of the court system and ought not to make a mockery of the courts. Hence, the invitation by the Applicant to revisit this matter must be rejected.

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.”

8. In light of the foregoing, it is my finding that the Petitioner’s application lacks merit. The same is dismissed.

DATED AND DELIVERED AT SIAYA THIS 20TH DAY OF JANUARY, 2025

D. KEMEI

JUDGE

In the presence of:

Kerry Odhiambo Gwada...Applicant

M/s Kerubo.....for Respondent

Ogendo.....Court Assistant

