



**Otieno v Republic (Miscellaneous Criminal Application
E120 of 2024) [2025] KEHC 452 (KLR) (17 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 452 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION E120 OF 2024**

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

BETWEEN

STEPHEN OMONDI OTIENO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein Stephen Omondi Otieno has filed the present application dated 24/10/2024 seeking for review of sentence to capture the period spent in custody prior to conviction and sentence by the trial court. The Applicant's case is that he spent in remand custody for three months. That he has undergone rehabilitation while in prison. That he had lodged an appeal to this court but which was dismissed.
2. I have considered the application. It is not in dispute that the Applicant had been convicted and sentenced to serve 15 years' imprisonment for the offence of defilement contrary to Section 8(1) and 8(4) of the *Sexual Offences Act* vide Bondo PMCR No. 438 of 2015. As averred by the Applicant, which I do not doubt, he lodged an appeal to the High Court which was dismissed. The Applicant has not indicated whether he lodged an appeal to the Court of Appeal following the dismissal of his appeal by this court. As the Applicant's appeal had been determined by this court, then this court is now functus officio and that the Applicant should proceed to the Court of Appeal for redress if aggrieved. The Applicant despite his appeal having been determined by this court, he now come back to attempt to have the second bite, at the cherry.

I find the attempt by the Applicant to invite this court to entertain his application must be resisted since this court cannot sit on appeal in a matter that it had already determined. Hence, I find the application to be an abuse of the court process.
3. In the result, it is my finding that the Applicant's application dated 24/10/2024 is devoid of any merit. The same is dismissed.



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

D. KEMEI

JUDGE

In the presence of:

Stephen Omondi Otieno.....Applicant

M/s Kerubo.....for Respondent

Mboya.....Court Assistant

