



Otieno v Republic (Miscellaneous Criminal Application E088 of 2024) [2025] KEHC 523 (KLR) (17 January 2025) (Ruling)

Neutral citation: [2025] KEHC 523 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION E088 OF 2024**

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

BETWEEN

SAMSON ODHIAMBO OTIENO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein Samson Odhiambo Otieno has filed the present application dated 6/8/2024 seeking for review of his ten-years sentence. His gravamen is inter alia; that he was convicted and sentenced to ten years for an offence of grievous harm contrary to Section 234 of the *Penal Code* vide Siaya Chief Magistrate’s Court Cr. No. 856 of 2019; that he later lodged an appeal at Siaya High Court which he withdrew on 29/7/2021; that he is urging this court to grant him leniency as he has reformed and rehabilitated and that he now merits a review of his sentence.
2. I have considered the Applicant’s application. It is not in dispute that the Applicant had lodged an appeal to this court but which he later withdrew. It is also not in dispute the Applicant had earlier filed a similar application vide Siaya High Court Misc. Cr. Application No. 95 of 2023 which was dismissed on 23/11/2023 by Ogembo J. It is noted that the Applicant deliberately left out his fact from this court with a view to unwillingly duping this court to believe that he had not lodged an application for review of sentence and thereby have an opportunity to take a second bite at the cherry. I find the conduct of the Applicant to be a kin to playing lottery with the courts. The Applicant is fully aware that this court is functus officio regarding his quest for review of sentence as the same has already been determined. The only option for him is to lodge an appeal to the Court of Appeal if aggrieved by the decision made by this court on 23/11/2023.

Further and without prejudice to the foregoing observations, the lower court record indicates that the Applicant severally injured the complainant whose spleen had to be removed completely and who has to rely on vaccines and antibiotics for the rest of his life. The injuries sustained by the victim who was



then aged 11 years old are life threatening. I find the sentence imposed was lawful and quite lenient in the circumstances.

3. In the result, it is my finding that the Applicant’s application dated 6/8/2024 lacks merit. The same is dismissed.

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

D. KEMEI JUDGE

In the presence of:

.....Applicant
.....for Respondent
.....Court Assistant

