



**Otieno v Republic (Miscellaneous Criminal Application  
E091 of 2024) [2025] KEHC 493 (KLR) (17 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 493 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
MISCELLANEOUS CRIMINAL APPLICATION E091 OF 2024**

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

**BETWEEN**

**PATRICK OWINO OTIENO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant herein Patrick Owino Otieno filed the present application on 13/8/2024 seeking for leave to lodge an appeal out of time to the Court of Appeal against the judgment of Aburili J, dated 16/12/2021 in Bungoma HCCR No. 9 of 2019. The affidavit in support thereof appear to contain averments over the intended appeal and not reasons for seeking to lodge appeal out of time.
2. I have given due consideration to the application. It is not in dispute that the Applicant was convicted and sentenced by this court vide HCCR No. 9 of 2019. It is also not in dispute that the Applicant was to lodge appeal within 14 days of the delivery of the sentence, if aggrieved, to the Court of Appeal. It is not in dispute that the Applicant later filed an application vide Siaya High Court Misc. Application No. 100 of 2022 seeking for leave to lodge an appeal to the Court of Appeal which was duly dismissed by Aburili J, on 23/9/2022. It is also not in dispute that the Applicant has neither lodged an appeal against the order of 23/9/2022 nor filed an application seeking review of the said orders. That being the position, I find the Applicant’s application is an abuse of the court process since the same cannot be entertained in isolation yet there had been a similar application by Applicant which was duly determined. The conduct of the Applicant in filing a fresh and similar application yet fully aware that his earlier application had been determined smacks of bad faith on his part. In the absence of the appeal or application for review against the orders dated 23/9/2022, the present application is clearly an abuse of the court process and must be rejected.
3. In the result, it is my finding that the Applicant’s application filed on 16/10/2024 is devoid of merit. The same is dismissed.



**DATED AND DELIVERED AT SIAYA THIS 17<sup>TH</sup> DAY OF JANUARY, 2025**

**D. KEMEI**

**JUDGE**

In the presence of:

Patrick Owino Otieno.....Applicant

M/s Kerubo.....for Respondent

Mboya.....Court Assistant

