



**Ombok v Republic (Criminal Petition 36 of 2023)
[2025] KEHC 4506 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4506 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL PETITION 36 OF 2023**

DK KEMEL, J

APRIL 8, 2025

BETWEEN

MOSES OMONDI OMBOK PETITIONER

AND

REPUBLIC PROSECUTOR

RULING

1. The Petitioner herein Moses Omondi Ombok filed the present petition seeking for review of sentence. His gravamen is inter alia; that he had been charged together with others in Bondo SPM’s Court vide Cr. No. 729 pf 2016 in regard to two counts of robbery with violence contrary to Section 296 (2) of the Penal Code; that he was inter convicted of the two counts and ordered to serve fifty (50) years’ imprisonment which were ordered to run concurrently; that he later lodged an appeal before the High Court vide Siaya HCCRA No. 12 of 2018 which was later dismissed; that he has since reformed; that the merits a non-custodial sentence; that he is now aged 55 years and he deserves to be given the benefit of the remaining years in prison being waived; that he has acquired several certificates while in prison and which prove that he has really been rehabilitated and merits to be given a chance to be released back to the society.
2. The Respondent did not file a response to the said application.
3. The application was canvassed by way of oral submissions.
4. The Applicant submitted that after his appeal was concluded by the High Court. his attempt to move to the Court of Appeal for redress were thwarted by the High Court which declined to grant leave to lodge appeal out of time unless he paid certain costs towards filing of appeal. He submitted that he was left with no option but to come back to this court for sentence review.
5. Learned counsel for the Respondent submitted that the Applicant has not yet exhausted all the avenues available such as moving to the Court of Appeal for redress if need be.



6. I have given due consideration to the application for sentence review by the Petitioner. It is not in dispute that the Petitioner has since lodged an appeal against his conviction and sentence vide Siaya HCCRA No.12 of 2018 which was duly determined. It is also not in dispute that the Petitioner has not lodged an appeal to the Court of Appeal ostensibly on+ grounds that his request to lodge appeal out of time was allowed with conditions which he has not managed to surmount. It is also not in dispute that the Petitioner has neither lodged an appeal against the said conditional leave nor filed a review over the same. As this court has already determined the Petitioner's appeal, it lacks jurisdiction to entertain the present application due to the doctrine of functus officio. It seems the Applicant wants this court to sit on appeal again in a matter which it had dealt with which is untenable. The Petitioner is literally asking this court to come up with another judgment on sentence yet it had already determined the same vide HCCRA No. 12 of 2018. This is impracticable. It matters not that the Petitioner has not had an opportunity to move the Court of Appeal due to some conditions imposed by this court. The Petitioner had the options of appealing against the orders imposing conditions to lodge appeal or seek for revision of those orders. He has done neither and that he is deemed to have exercised his options wisely.
7. In view of the foregoing observations, it is my finding that the Petitioner's application herein is devoid of merit. The same is dismissed.

DATED AND DELIVERED AT SIAYA THIS 8TH DAY OF APRIL, 2025.

D. KEMEI

JUDGE

In the presence of:

Moses Omondi Ombok.....Petitioner

Kofa.....for Respondent

Okumu.....Court Assistant

