



**Khalumba & 2 others v Director of Public Prosecutions (Miscellaneous Criminal Application E023 of 2023) [2024] KEHC 1328 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1328 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
MISCELLANEOUS CRIMINAL APPLICATION E023 OF 2023  
SC CHIRCHIR, J  
FEBRUARY 15, 2024**

**BETWEEN**

**CHRISTOPHER NDUSI KHALUMBA ..... 1<sup>ST</sup> APPLICANT**

**MOSES KHADAGA SHIRIMBA ..... 2<sup>ND</sup> APPLICANT**

**FELIX KHATENYERA MULAMULA ..... 3<sup>RD</sup> APPLICANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... RESPONDENT**

**RULING**

1. What is coming up for determination is an Application for review of sentence, by the Applicants.
2. The three were convicted by the chief Magistrate's court at kakamega for the offence of Robbery with violence and sentenced to Death in Criminal Case No. 72 of 2015.
3. Following an appeal to this court, under High Court Criminal Appeal No. 125, Justice Ogola, reduced the sentence to 20 years.
4. On 6<sup>th</sup> December, 2020, the Applicants came back to court under Misc. Criminal Application No. 72 of 2020 seeking for a review of the sentence, this time seeking that the sentence of 20 years be further reduced. In a ruling delivered on 18.10.2023, Justice Otieno struck out the Application on grounds that this court is functus Officio as Justice Ogola had already reviewed the sentence, albeit through an Appeal.
5. However, while the Misc. Application NO. 72 of 2020 was pending determination before this court, the Applicants moved to Bungoma High Court and filed Misc. Application No. E018 of 2023, seeking the same prayers. On noticing that this matter emanated from this court, the Judge in Bungoma referred the Application to this court and was registered under the current miscellaneous Number.



6. The prayers being sought therefore have been adjudicated upon before, by no less than two Judges, on two different times. By coming back to the High court, and filing similar Applications , and in two different courts, the Applicants are engaging in mischief, are being vexatious and are abusing the court process.
7. Nevertheless, as pointed out by Justice Otieno, in his Ruling dated 18.10.2023 , the Applicants ought to have moved to the court of Appeal if they were not satisfied by the Judgment of Justice Ogola.
8. Further , in the aforesaid Ruling, Justice Otieno had held that this court has become functus officio in as far as review of sentence is concerned. It remains so.
9. Consequently, the Application dated 27<sup>th</sup> March, 2023 is hereby struck out.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 15<sup>TH</sup> DAY OF FEBRUARY, 2024.**

**S. CHIRCHIR**

**JUDGE**

**In the presence of;**

Godwin- Court Assistant

The Appellants.

