



**Obiye v Republic (Miscellaneous Criminal Application
E022 of 2024) [2024] KEHC 5799 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5799 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CRIMINAL APPLICATION E022 OF 2024**

HI ONG'UDI, J

MAY 17, 2024

BETWEEN

MICHAEL OGARO OBIYE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Michael Ogaro Obiye the applicant is Convict No. NAK/1644/ 022/LS having been convicted vide Molo CM's Court Criminal Case No. E3042/2021 for the offence of Robbery with Violence contrary to section 297(2) of the *Penal Code*. Upon conviction on 30/08/2022 he was sentenced to twenty-five (25) years imprisonment.
2. Together with his co-accused Edwin Getanda Gikenyi they filed Nakuru High Court Criminal Appeal No. E058 of 2022 which was heard and a Judgment rendered by Justice Chemitei on 14/06/2023. In the Judgment the court upheld the conviction but reduced the sentence from twenty-five (25) years to seven (7) years imprisonment.
3. The Applicant through the undated notice of motion filed on 26/02/2024 wants this court to review the sentence and place him on probation, for the remaining period of his sentence. His main ground for this is that he is now a reformed person.
4. The application was argued orally, with the applicant requesting for a probation sentence in order to go and serve the public as he provides for his children.
5. The application was opposed by M/s Okok for the prosecution. Her submission was that the Appeal by the applicant having been heard and determined by a Judge of equal jurisdiction, this court lacks the jurisdiction to hear the application.



6. The record is clear on what has transpired in this matter. An appeal over the matter has already been heard, determined and sentence reduced by the High Court. That being the case, this court with similar jurisdiction cannot review that decision.
7. Since the applicant is not satisfied with the High court decision he should now move to the Court of Appeal. I therefore in the circumstances dismiss the application filed on 26/02/2024.
8. Orders accordingly

DELIVERED, DATED AND SIGNED THIS 17TH DAY OF MAY, 2024 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

