



**Apiyo v State (Miscellaneous Criminal Application 141 of 2023)
[2024] KEHC 7134 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7134 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION 141 OF 2023**

**DO OGEMBO, J
JUNE 13, 2024**

BETWEEN

SAMWEL ONDENG APIYO APPLICANT

AND

STATE RESPONDENT

(Being an Application for Sentence Review from Sentence in the PM's at Bondo in Sexual Offence Case No. 40 of 2017 delivered on 8th August 2018 by E. N. Wasike, SRM)

RULING

1. The Applicant herein, Samwel Ondeng Apiyo has applied to this court by a Notice of Motion application dated 3/9/2023 that this court reviews his sentence. He has pleaded that he is a first offender and urges the court to revise his sentence. He has pleaded that he is a first offender and urges the court to revise his sentence and place him on community service orders or on probation.
2. The prosecution have opposed this application on grounds that this court is functus officio in this matter.
3. I have considered this application and the record of proceedings regarding this case. I have noted that the applicant was sentenced to serve 20 years for the offence of defilement in Bondo PM's Court S.O. No. 40 of 2017. He thereafter appealed against the sentence in HCCR Appeal No. 39/2018, Siaya. The Hon. Justice Aburili dismissed the Appeal in a judgment dated 18/11/2019. In dismissing the applicant's appeal on sentence, the Hon. Judge, observed:

“I have considered the above circumstances of the offence and the fact that the appellant is a repeat offender. In my humble view, the sentence imposed was appropriate. The appellant must be kept away from society long enough for him to learn his lesson and protect children from being preyed upon by him.”



4. I find no reason to interfere with the sentence of 20 years imprisonment imposed on appellant by the trial magistrate. I decline to interfere and uphold it.”
5. Clearly, the orders that the applicant seeks vide this present application have been dealt with by a court of concurrent jurisdiction. To that extent, this court is functus officio in this matter. I decline this application and dismiss it wholly.

DATED, SIGNED AND DELIVERED THIS 13TH DAY OF JUNE, 2024.

D. O. OGEMBO

JUDGE

13/6/2024

COURT

Ruling read out in presence of applicant (Naivasha Prison) and Ms. Kerubo for State.

D.O. OGEMBO

JUDGE

13/6/2024

