



**Oloo v Republic (Criminal Revision E241 of 2022)  
[2023] KEHC 3563 (KLR) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3563 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CRIMINAL REVISION E241 OF 2022  
GL NZIOKA, J  
APRIL 20, 2023**

**BETWEEN**

**HENRY OMONDI OLOO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was arraigned before the Chief Magistrate's Court at Naivasha charged *vide* Criminal Case No 2271 of 2018, with the offence of shop breaking and committing a felony contrary to section 306 (a) of the [Penal Code](#) and an alternative charge of handling stolen goods contrary to section 322 (1) (2) of the [Penal Code](#). He was convicted on the main count and sentenced to seven (7) years imprisonment.
2. He avers that he applied for review of the sentence *vide* High Court Miscellaneous Application No E078 of 2021, which was heard and the sentence reduced to four (4) years on the 1<sup>st</sup> count. That he now seeks for sentence review on count 2, wherein he wants the sentence on that count reviewed.
3. The respondent was served with the application but no response has been filed. Be that as it were, first and foremost there is no provision in law where the litigant is allowed to litigate a matter in piecemeal and in particular the same subject matter in two different applications.
4. Thus if the subject matter herein was heard *vide* High Court Miscellaneous Criminal Application No E078 of 2021; then this court is "*functus officio*" and cannot revisit the same matter again and on that ground alone, the application herein is an abuse of the court process and is struck out.
5. Even then, considering the same on merit (if it was valid), I note that, the sentence meted out is lawful and legal and therefore there is no basis of interfering. Furthermore, the trial court record reveals that, the applicant is not a first offender, that at the time of sentencing him in this matter, he was serving another custodial sentence over a similar offence.



6. In fact, other than the matter herein, he has been charged and convicted *vide* Chief Magistrate Criminal Case Nos 2312 and 2314 of 2018 from which he filed High Court Criminal Revision No 3 of 2019, which was heard determined on July 20, 2019. He then filed another revision No 4 of 2021 which was also heard and determined on May 21, 2021. He then filed High Court Criminal Miscellaneous Application No E078 which was heard and determined on December 16, 2021, and now the matter herein.
7. From the aforesaid, the applicant is not only abusing the due process of the law but committing an offence of non-disclosure of previous matter or averring to the absence thereof. The conduct of the applicant and the duplicity of applications has exposed several players: High Court Registry for proof recording keeping, Prison Authority where the duplicity of application is done and the Respondent who could not pick out the vice.
8. Pursuant to the aforesaid, I direct the honourable deputy registrar to delve into this matter and establish how all these applications came to be and report back to court administratively.
9. In the meantime, the applicant herein being a habitual offender, does not deserve any room for review of sentence. In view of all the aforesaid I dismiss the application for review.
10. I further direct that, the honourable deputy registrar ensure that the order of this court is served upon the Prison Authority to ensure no continuous abuse of the process by the applicant (who should be blacklisted).
11. It is so ordered.

**DATED, DELIVERED AND SIGNED ON THIS 20TH DAY OF APRIL, 2023**

**GRACE L NZIOKA**

**JUDGE**

**In the presence of:**

Appellant present in person, in court virtually

Mr Atika for the Respondent

**Ms Ogutu: Court Assistant**

