



**Nyasudi v Republic (Criminal Revision E080 of 2024)
[2024] KEHC 14188 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14188 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL REVISION E080 OF 2024
DK KEMEL, J
NOVEMBER 15, 2024**

BETWEEN

JACOB OTIENO NYASUDI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein Jacob Otieno Nyasudi was charged with an offence of defilement contrary to Section 8 (1) as read with Section 8 (2) of the *Sexual Offences Act* No. 3 of 2006 vide Ukwala PM's SO 835 of 2015 where he was convicted and sentenced to serve life imprisonment. He has filed an undated notice of motion seeking principally for an order that his sentence be reviewed.
2. The application is supported by grounds on the face thereof and by a supporting affidavit. The grounds are inter alia; that upon conviction and sentence by the lower court, he moved to the High Court vide Siaya Cr Appeal No. 70 of 2017 which was dismissed; that he has lodged an appeal before the Court of Appeal in 2022 but that he is yet to know the outcome of the same.
3. The application was canvassed by way of oral submissions. The applicant submitted that he should be placed on a least severe sentence namely, on probation as he has served a substantial part of the sentence and that he should be released back to the society. He now seeks for consideration to rejoin his family and community. That he is now rehabilitated fully and merits an order for probation.
4. The Respondent's counsel opposed the application on the grounds that the applicant had already lodged an appeal at the Court of Appeal rendering this court functus officio.
5. I have considered the applicant's application and the oral submissions. Indeed, the applicant's application seeks for revision of sentence. As this court had dealt with the earlier appeal case, it cannot again sit on its own appeal and purport to determine the latest application owing to the principle of functus officio. Again, the Applicant has confirmed that he did file an appeal to the Court of Appeal



sometimes in 2022 but he is yet to get a feedback. If that is the position, then it would have been appropriate for the Applicant to be patient and wait for a determination on his appeal now pending at the Court of Appeal. His conduct in coming back to this court yet it has already determined his appeal must be frowned upon.

6. The term “functus” is defined at page 840 of Jowitts Dictionary of English Law 2010 Edition as: -

“functus officio (having discharged its duty), an expression applicable to a Judge, magistrate or arbitrator who has given a decision made an order of award so that his authority is exhausted.”

7. In the matter before me, the applicant on his own words admitted that his appeal in HCCRA No. 70/2017 was duly dismissed by this court and that he has not filed an appeal to the Court of Appeal. As a decision has been rendered by this court, then the court is functus officio in this regard and that the only recourse for the applicant is for the applicant to wait for the verdict of the Court of Appeal. The courts and the appeal system must be adhered to by the applicant. He should not play lottery with the courts.

8. In light of the foregoing, it is my finding that the applicant’s application lacks merit. The same is dismissed.

DATED AND DELIVERED AT SIAYA HIGH COURT THIS 15TH DAY OF NOVEMBER, 2024.

D. KEMEI

JUDGE

In the presence of:

Jacob Otieno Nyasundi.....Applicant

M/s Kerubo.....For Respondent

Ogendo.....Court Assistant

