



**Ndwiga v Republic (Miscellaneous Criminal Application E107 of 2022)
[2024] KEHC 14352 (KLR) (8 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14352 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION E107 OF 2022
RE ABURILI, J
NOVEMBER 8, 2024**

BETWEEN

PETER NJERU NDWIGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The convict Peter Njeru Ndegwa was sentenced to serve death sentence on 19/5/2016 vide Siaya PM Cr. Case No. 48/2014. He appealed vide Siaya HCCRA 56/2016 which appeal was heard on merit and dismissed on 19/4/2018. He applied to be allowed to appeal against the judgment because he delayed in filing of the appeal and vide a ruling of 18/4/2018, Cherere Judge, declined.
2. He went to the Court of Appeal vide Cr. Appeal No. E281/2022 which court allowed his appeal on 24/11/2023 and directed him to file and serve a Notice of Appeal within 7 days of 24/11/2023 and file a record of appeal within 30 days. He filed Notice of Appeal dated 30/11/2023 which is on record.
3. The applicant now applies again vide Notice of Motion dated 5/12/2023 for resentencing and to commute his sentence to the period served, after revising sentence from custodial to non-custodial, I have considered the application and affidavit in support. The convict having been granted leave by the Court of Appeal to appeal out of time cannot return to this court which affirmed his sentence for resentencing in a matter which the court already pronounced itself on appeal.
4. I find the application to be devoid of any basis as this court is deprived of jurisdiction to sit on its own appeal. The application dated 5/12/2023 is dismissed. This file is closed.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 8TH DAY OF NOVEMBER, 2024

R. E. ABURILI

JUDGE

