



**Odhiambo v Republic (Criminal Miscellaneous Application
E073 of 2024) [2024] KEHC 14154 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14154 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL MISCELLANEOUS APPLICATION E073 OF 2024**

**DK KEMEL, J
NOVEMBER 15, 2024**

BETWEEN

KENNEDY OMONDI ODHIAMBO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein Kennedy Omondi Odhiambo has filed an application dated 16/7/2024 seeking principally for an order that his sentence be reviewed.
2. The application was canvassed by way of oral submissions.
3. The applicant submitted that he should be placed on probation. He confirmed that he had been charged with an offence of defilement at Bondo Law Courts and sentenced to ten years’ imprisonment. That he has so far served four years and four months. That he has learnt a lot of things while in custody and that he now seeks for consideration to rejoin his family and take care of them. 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 sentence imposed is a legal one worthy of a charge of defilement.
5. I have given due consideration to the application and the brief oral submissions. It is not in dispute that the applicant was sentenced to serve ten (10) years’ imprisonment vide Bondo SPM’s Court Cr. No. 242 of 2016 in June 2021.

It is also not in dispute that he applicant later filed Siaya High Court Criminal Misc. Application No. E002 of 2023 pursuant to the provisions of Section 333 (2) of the Criminal procedure Code and which was dismissed. It is also not in dispute that the applicant has neither lodged an appeal against the conviction and sentence by the lower court to this court and further has not lodged an appeal to



the Court of Appeal against the dismissal of his application No. E002 of 2023. The only issue for determination is whether the application has merit.

6. It is noted that the applicant has exercised his options as deemed fit. He has opted not to lodge appeal against conviction and sentence before this court and instead preferred an application pursuant to Section 333 (2) of the Criminal Procedure Code vide Siaya HC Cr. Misc. Application No. E002 of 2023 which has since been dismissed. Upon dismissal, this court thus became functus officio and that the applicant should move to the Court of Appeal if aggrieved. It is trite that a court cannot rehear an application it had heard and determined before. Indeed, both the applicant's earlier application and the present one sought for revision of sentence. As this court had dealt with the earlier application, it cannot again sit on its own appeal and purport to determine the latest application owing to the principle of functus officio.
7. 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."
8. In the matter before me, the applicant on his own words admitted that a previous application for revision of sentence vide Siaya High Court Cr. Misc. Application No. E002 of 2023 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 to move to 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.
9. In light of the foregoing, it is my finding that the applicant's application dated 16/7/2024 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

Kennedy Omondi Odhiambo.....Applicant

M/s Kerubo.....for Respondent

Ogendo.....Court Assistant

