



**Wayoga v Republic (Criminal Miscellaneous Application E081 of 2024)
[2024] KEHC 14242 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14242 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL MISCELLANEOUS APPLICATION E081 OF 2024**

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

BETWEEN

ERICK ODHIAMBO WAYOGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein Erick Odhiambo Wayoga has filed an application dated 6/3/2024 seeking principally for an order that his sentence be reviewed.
2. The application is supported by grounds on the face thereof and a supporting affidavit sworn 6/3/2024.
3. The application was canvassed by way of oral submissions. The applicant submitted that he should be placed on probation. He confirmed that he had been charged with an offence of robbery with violence contrary to Section 295 as read with section 296(2) of the *Penal Code* vide Bondo CRC No. 580/2014 and sentenced to life imprisonment. That he later lodged an appeal to the High Court vide Siaya HCCRA No. 4 of 2016 which was subsequently dismissed. That he lodged an appeal to the Court of Appeal in 2018 but yet to get any response. That he has learnt a lot of things while in custody and that he now seeks for consideration to rejoin his family and contribute actively to national building. 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 an offence of robbery with violence. Learned counsel maintained that the application is an abuse of court process as the court is already functus officio.
5. I have given due consideration to the application and the brief oral submissions. It is not in dispute that the applicant was found guilty and convicted for the offence of robbery with violence contrary to Section 295 and 296 (2) of the *Penal Code* and sentenced to serve life imprisonment vide Bondo CRC



No. 580/2014. It is also not in dispute that the applicant later filed an appeal on both conviction and sentence vide Siaya High Court Criminal Appeal No. E04/2016 wherein the appeal against conviction and sentence was dismissed in its entirety. The applicant being dissatisfied with the outcome of the appeal, he filed an appeal at the Court of Appeal Kisumu which is yet to be determined.

6. It is noted that the applicant has exercised his options as deemed fit and has now preferred the present application seeking for review of sentence.
7. This court having already decided on the applicant's appeal in Siaya HCCRA No. E04/2016, it became functus officio and that the applicant moved to the Court of Appeal as he was aggrieved. It is trite that a court cannot rehear an application on the same case it had heard and determined before. As this court had dealt with his appeal which was decided and rendered by Justice Makau, it cannot again sit on its own appeal and purport to determine the latest application owing to the principle of functus officio.
8. 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."
9. In the matter before me, the applicant on his own words admitted that since he was not satisfied with the lower court decision, he moved the High Court by an appeal vide Criminal Appeal No. E04/2016 and that a decision was rendered dismissing the appeal on both conviction and sentence. The applicant further confirms that he filed an appeal in the Court of Appeal and which has not been determined yet. He should proceed with his said pending appeal at the said appellate court.
10. As a decision has been rendered by this court, then the court is functus officio in this regard and that it has no jurisdiction to deal with it. The courts and the appeal system must be adhered to by the applicant. He should not play lottery with the courts.
11. In light of the foregoing, it is my finding that the applicant's application dated 6th March, 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:

Erick Wayoga Odhiambo.....Applicant

M/s Kerubo.....For Respondent

Ogendo.....Court Assistant

