



**Adan v Republic (Miscellaneous Criminal Application E035 of 2024)
[2024] KEHC 15825 (KLR) (16 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15825 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E035 OF 2024
JN ONYIEGO, J
DECEMBER 16, 2024**

BETWEEN

ABDULLAHI NOOR ADAN APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged, convicted and sentenced to twenty years imprisonment for the offence of attempted rape contrary to Section 4 of the [Sexual Offences Act](#) and assault contrary to section 251 of the [Penal Code](#).
2. Aggrieved by the said sentence, he appealed to the high court vide criminal appeal No E011 of 2020. The high court dismissed the appeal on conviction. The Hon. Judge substituted the omnibus sentence of 20 years imprisonment for the two counts to 20 years in respect of count two and five years in respect to count two and sentences to run consecutively.
3. Undeterred, the applicant moved to this court vide a notice of motion dated 16-10-2024 seeking mercy and leniency on grounds that he has since reformed. The prosecution opposed the application on grounds that the court is functus officio. There is no dispute that the applicant's appeal was dismissed. He did not appeal to the court of appeal. He has not challenged the legality of the sentence.
4. I have considered the application herein and the objection thereof plus oral submission by both parties. There is no dispute that this court has determined the appeal touching on the same subject matter. It is trite that a trial court has the discretion to impose sentence unless the same is illegal or irregular. In this case the high court corrected the sentence and dismissed the appeal.
5. It is trite law that this court cannot review a sentence that has been confirmed by a court of concurrent jurisdiction and later by a senior court. See [Gathige v Republic](#) (Miscellaneous Criminal Application



E008 of 2022) [2022] KEHC 14733 (KLR) (31 October 2022) (Ruling)Neutral citation: [2022] KEHC 14733 (KLR)

“I have considered the fact that, upon conviction the applicant appealed to the High Court vide HCCRA No 9 of 2017, and upon considering the appeal the court dismissed it in its entirety. Of great importance, the appellate court observed that, the sentence meted out by the trial court was too lenient.

The decision of the High Court on appeal renders this court *functus officio*. The applicant should have canvassed the issues herein in the aforesaid appeal. He cannot be allowed to litigate in piece meals”.

6. In the circumstances of this application, I agree with the state’s submission that this court has no jurisdiction to re-open the case herein. It is simply *functus officio*. To that extent, the application is dismissed.

DATED, SIGNED AND DELIVERED THIS 16TH DAY OF DECEMBER THIS 2024

J. N. ONYIEGO

JUDGE

