



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Musingo v Republic (Criminal Petition E005 of 2024)  
[2024] KEHC 15554 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15554 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL PETITION E005 OF 2024**

**DK KEMEL, J**

**DECEMBER 6, 2024**

**BETWEEN**

**VINCENT ONYANGO MUSINGO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The petitioner herein Vincent Onyango Musingo is a convict who had been charged alongside one Gabriel Omondi for the offence of robbery with violence contrary to Section 296 (2) of the *Penal Code* vide Ukwala PM's Criminal Case No. 568/2011. The Petitioner herein was sentenced to serve mandatory death sentence which was later commuted to life imprisonment vide Siaya HC Mis. Criminal Application No. 22 of 2018
2. The Petitioner lodged an appeal to both High Court and Court of Appeal seeking review of sentence and in which both appeals were dismissed.
3. The Petitioner is now back in this court vide this application seeking for further sentence review having exhausted all the appeal avenues. He seeks his sentence be reduced to 20 years' imprisonment or a lesser one.
4. The Applicant has clearly indicated in his Notice of Motion that he lodged an appeal against the conviction and sentence of the lower court decision in this court and which was dismissed and that he later moved to the Court of Appeal.
5. 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*.
6. I have considered the Petitioner's application and the written submissions. Indeed, the Petitioner'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*. The conduct in coming back to this court yet it has already determined his appeal must be frowned upon. It seems the Applicant is playing lottery with the courts which cannot be countenanced. The Applicant having exhausted all his appeals must accept the verdict of the court of last resort namely the Court of Appeal. The Applicant must obey the hierarchy of the court system and ought not to make a mockery of the courts. Hence, the invitation by the Applicant to revisit this matter must be rejected.

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

**DATED AND DELIVERED AT SIAYA THIS 6<sup>TH</sup> DAY OF DECEMBER, 2024.**

**D. KEMEI**

**JUDGE**

**In the presence of:**

Vincent Onyango..... Applicant

Mocha..... For Respondent

Ogendo..... Court Assistant

