



**Onginjo v Republic (Criminal Miscellaneous Application
E075 of 2023) [2024] KEHC 15671 (KLR) (9 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15671 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL MISCELLANEOUS APPLICATION E075 OF 2023**

DK KEMEL, J

DECEMBER 9, 2024

BETWEEN

DAVID OWINO ONGINJO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant David Owino Onginjo is a convict for the offence of defilement contrary to Section 8(1) as read with Section 8 (4) of the [Sexual Offences Act](#). He was convicted and sentenced to serve 30 years imprisonment vide Bondo CM's Criminal Case No. 174/2014.
2. The application is supported by grounds on the face thereof and by a supporting affidavit of the Applicant. The grounds are inter alia; that upon conviction and sentence by the lower court, he moved to the High Court vide Siaya HCCRA 10/2016 which was dismissed; that he lodged an appeal before the Court of Appeal and which was dismissed as well.
3. It is worth noting that the Applicant filed his submissions on 15/10/2024 in which he submitted that he should be placed on a least severe punishment; that he is transformed, rehabilitated,; socially transformed through several trainings including spiritual as he is remorseful; and that the sentence to run from the date of arrest; he now seeks for consideration to rejoin his family and community; that he is now rehabilitated, fully and merits an order of probation.
4. It was submitted by the Respondent that the application is incompetent and should be struck out for being improperly before this court.
5. I have carefully considered the Applicant's application and the written submissions by the parties.



6. The Applicant has not disputed that he exercised his right of appeal wherein he should have raised all issues to do with sentence. He submits that he has been reformed hence he should be set free to serve probation under the *Community Service Orders Act*.
7. 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.
8. I have considered the applicant's application and the written submissions. Indeed, the applicant'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. Again, the Applicant has confirmed that he did file an appeal to the Court of Appeal sometimes which was dismissed. His conduct in coming back to this court yet it had already determined his appeal must be frowned upon.
9. 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."
10. 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 lacks merit. The same is dismissed.

DATED AND DELIVERED AT SIAYA HIGH COURT THIS 9TH DAY OF DECEMBER, 2024

D. KEMEI

JUDGE

In the presence of:

David Owino Onginjo.....Applicant

M/s Mumufor Respondent

Ogendo.....Court Assistant

