



**Sumba v Republic (Criminal Miscellaneous Application E007 of 2024)
[2024] KEHC 15577 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15577 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL MISCELLANEOUS APPLICATION E007 OF 2024**

**DK KEMEL, J
DECEMBER 6, 2024**

BETWEEN

ESAIYA OTIENO SUMBA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Isaiya Otieno Sumba is a convict for the offence of robbery with violence contrary to Section 296 (2) of the Penal Code vide Bondo PM’s Criminal Case No 729/2016. He was sentenced to serve 50 years’ imprisonment vide the judgment dated 24/1/2018.
2. The Applicant being aggrieved by the conviction and sentence of the trial court, he exercised his rights by lodging an appeal to the High Court vide Siaya High Court Criminal Appeal No.729/2018 which appeal was dismissed.
3. He further moved to the Court of Appeal after the dismissal of his appeal by this court.
4. 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.
5. The Respondent’s counsel opposed the application on the grounds that the Applicant had already lodged an appeal to the Court of Appeal rendering this court functus officio.
6. 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*. The conduct of the Applicant in coming back to this court yet it has already determined his appeal must be frowned upon.



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.”

The Applicant has by his own words confirmed that he has lodged an appeal to the Court of Appeal but has not indicated whether the said appeal is still pending or concluded. If it is still pending, then the Applicant should wait for its determination. On the other hand, should it have been concluded, then the Applicant should content with it and ought not to come back to this court as it is already functus officio. It is clear that the Applicant is playing lottery with the court which cannot be countenanced.

8. In light of the foregoing, it is my finding that the applicant’s application dated 27/1/2024 lacks merit. The same is dismissed.

DATED AND DELIVERED AT SIAYA THIS 6TH DAY OF DECEMBER, 2024.

D. KEMEI

JUDGE

In the presence of:

Esaiya Otieno Sumba..... Applicant

Mocha.....for Respondent

Ogendo.....Court Assistant

