

REPUBLIC OF KENYA

HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CRIMINAL REVISION 41 OF 2019

ERICK ODHIAMBO OPONDO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. On 18th October 2012, the applicant was arraigned before the Chief Magistrate's court at Makadara vide Criminal Case No. 5445 of 2012, charged jointly with others, in several counts, with the offence of; gang rape contrary to, section 10 of the Sexual Offences Act, No, 3 of 2006, and several alternative counts of; committing indecent act with a child contrary to section 11(1) of the Act.
2. He was subsequently convicted and sentenced to serve thirty (30) years imprisonment. However, he appealed against the decision of the trial court vide High Court Criminal Appeal No. 123 of 2016, but the appeal was determined.
3. The applicant being aggrieved, on 7th March 2019, filed an application vide, High Court Miscellaneous Criminal Appeal No. 124 of 2019, which was heard on 24th July 2019, by Hon. Justice L. Kimaru. The court held that, since it had considered the applicant's appeal, it was *functus officio*. That, for the applicant to file the subject application, it amounted to an abuse of the due process of the court. Further, if the applicant was aggrieved by the results of appeal, he should appeal to the Court of Appeal. The High Court then dismissed the application and ordered the file closed.
4. Apparently, at the time the applicant filed the subject application, he had on; 19th February 2019, filed another application vide, High Court Criminal Revision No. 41 of 2019, which is the subject of the matter herein. He did not disclose to the court that there was another application pending, which had not been heard and determined.
5. It is therefore clear that, the applicant filed multiple applications. This is total abuse of the due process of the law. He was aware that, his appeal was unsuccessful. He acted in bad faith. In deed after the High Court dismissed his application vide High Court Miscellaneous Criminal Application No. 124 of 2019, he should have been "honest" enough to withdraw the application herein.
6. Furthermore, the court order in; High Court Miscellaneous Criminal Application No. 124 of 2019, directed him to appeal if he was dissatisfied with the decision of the High Court on his appeal. Consequently, in view of the decision of the court in High Court Miscellaneous Criminal Application No. 124 of 2019, the application herein is not tenable as the court has already dealt with it and has been overtaken by events.
7. In that case, I order the application be and is hereby dismissed for lack of merit and/or being *res judicata*. In view of the cunning conduct of the applicant, and to avoid him filing any other application, this order should circulate to all other relevant institutions for necessary action.
8. In the meantime, this file is marked closed.

It is so ordered.

DATED DELIVERED VIRTUALLY AND SIGNED ON THIS 8TH DAY OF OCTOBER 2021.

GRACE L. NZIOKA

JUDGE

In the presence of:

Applicant present in person

Ms Ndombi for the Respondent

Edwin Ombuna-Court Assistant