

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CONSTITUTIONAL PETITION NO. 39 OF 2019

ALBERT OTIENO ONYANGO.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. This Petition for resentencing is found on the face of it to be misconceived, frivolous, vexatious and as abuse of court process as the petitioner was convicted of the offence of defilement and sentenced to serve 10 years imprisonment.
2. He appealed before this court and lost his appeal. Instead of challenging the decision of this court before the Court of Appeal, he has come back for resentencing. This is misconceived. The court is *functus officio* having dismissed his appeal on conviction and sentence, it cannot purport to resentence him.
3. He concedes that Siaya HCRA 162 of 2016 was dismissed by this court, albeit the 10 years imprisonment was mandatory, there is no jurisdiction for this court to resentence him where he has not exhausted the appeal mechanisms.
4. Accordingly, this petition which seeks to open a Pandora box for all other convicts is hereby found to be mischievous. The same is dismissed. The Petitioner to serve the sentence imposed in Siaya P.M's Court. Cr. Case No. S.O. No. 1 of 2015 as per his Petition.
5. This file is closed.
6. Orders accordingly.

Dated, Signed and Delivered at Siaya this 19th Day of November, 2019

R. E. ABURILI

JUDGE

In the presence of:

Petitioner in person

Mr. Ngetich prosecution Counsel for the Respondent

CA: Brenda and Modestar