



**Atieno v Republic (Criminal Petition 130 of 2023)  
[2025] KEHC 521 (KLR) (27 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 521 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL PETITION 130 OF 2023  
DK KEMEL, J  
JANUARY 27, 2025**

**BETWEEN**

**PAUL OMONDI ATIENO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Petitioner herein Paul Omondi Atieno is a convict for the offence of defilement contrary to Section 8(1) as read with Section 8 (3) of the *Sexual Offences Act* of 2006. He was convicted and sentenced to serve 25 years imprisonment vide Bondo CM’s Criminal Case No. 174/2014.
2. The petition is supported by grounds on the face thereof and by a supporting affidavit sworn by the Petitioner. The grounds are inter alia; that upon being aggrieved by the conviction and sentence of the lower court, he moved to the High Court vide Siaya HCCRA 141/2013 which was dismissed; that he as well lodged an appeal before the Court of Appeal *vide* Kisumu C.O.A No. 36/2015 and which was dismissed as well.  
  
The Petitioner avers inter alia; that he be considered for sentence review to a lesser one; that while in prison, he underwent through formal education where he attained a KCSE Certificate of D+ with 27 points; that the prison has helped him shape his future as he is now reformed and prays to be given a second chance. That he merits to be placed under probation.
3. The Respondent’s counsel left the matter to the Court to make a determination.
4. I have considered the Petitioner’s petition and the supporting affidavit thereof. Indeed, the Petitioner seeks for revision of sentence and it is worth noting that this court had earlier on made a determination on a similar application. As this court had dealt with the earlier appeal case and that the Applicant has since moved to the Court of Appeal, it cannot again sit on its own appeal and purport to determine



the latest petition 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.

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.”

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

**DATED AND DELIVERED AT SIAYA HIGH COURT THIS 27<sup>TH</sup> DAY OF JANUARY, 2025.**

**D. KEMEI**

**JUDGE**

In the presence of:

Paul Omondi Otieno.....Applicant

M/s Mumu.....for Respondent

Ogendo.....Court Assistant

