



**Okiri v Republic (Miscellaneous Criminal Application 124 of 2024)  
[2024] KEHC 16148 (KLR) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16148 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
MISCELLANEOUS CRIMINAL APPLICATION 124 OF 2024**

**DK KEMEL, J**

**DECEMBER 20, 2024**

**BETWEEN**

**NELSON OCHIENG OKIRI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant Nelson Ochieng Okiri was convicted and sentenced to serve 15 years' imprisonment for the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) vide the judgment of this court in Siaya High Court Cr. Case No. E030/2021 dated 7/11/2022.
2. The Applicant being dissatisfied with the decision of this court, he lodged an application against the conviction and sentence vide Siaya Misc. Application No. E017 of 2023 of which was dismissed for lack of merit as he had been given a lesser and lenient sentence by Aburili- J on 28/2/2023. The learned Judge held that this court is *functus officio* as it had already rendered a decision on the said matter.
3. It is not in dispute that the Applicant being aggrieved with the outcome of the decision of this court, did not lodge an appeal against conviction and sentence to the Court of Appeal. No reason has been given as to why he has not exercised his rights.
4. The Applicant is now back vide this application *Misc. Criminal Application No. 124 of 2024* seeking a further review of his sentence.
5. I have considered the Applicant's Notice of motion and affidavit in support. I must point out that this court having already rendered a decision on the matter, it became *functus officio*. He had filed another *Misc Application No. E017 OF 2023* which was dismissed by Aburili J on 28/2/2023 for lacking in merit. It is clear that the present application is clearly an abuse of the court process and is devoid of merit as this court is already *functus officio*. The Applicant ought to move to the highest court namely the Court of Appeal if aggrieved by the orders of this court. The Applicant must stop playing lottery



with the court as this cannot be countenanced. He should pursue his grievances with the Court of Appeal for redress.

6. I find the application dated 15/10/2024 devoid of merit. The same is hereby dismissed.

**DATED AND DELIVERED AT SIAYA THIS 20<sup>TH</sup> DAY OF DECEMBER, 2024.**

**D. KEMEI**

**JUDGE**

In the presence of:

N/A.....Applicant

Mocha.....for Respondent

Ogendo.....Court Assistant

