



REPUBLIC OF KENYA



Shikoli v Republic (Petition E020 of 2023) [2025] KEHC 6898 (KLR) (26 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6898 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PETITION E020 OF 2023
RN NYAKUNDI, J
MAY 26, 2025**

BETWEEN

DAVID SHIKOLI PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application in the case as follows:
 - a. That, I am a first offender and thus beg for leniency.
 - b. That I am remorseful, repentant and reformed as I have learned to take responsibility of my own actions.
 - c. That, this court ha pronounced itself concerning the minimum-maximum sentence *vide* petition NO E017 OF 2021 at Machakos.
 - d. That, I have served 6 years in prison
 - e. That may this honourable court be pleased to consider the sentencing policy of 2016 published by the Kenya judiciary and establish the mitigating circumstances that would lessen the custodial sentence.
 - f. That, I am seeking for consideration of section 39(2) of the SOA No.3 of 2006 and now praying to be admitted to non-custodial sentence for the remaining part of sentence.
 - g. That more grounds to be adduced at hearing there-of and determination of this application
It is further annexed by an affidavit which states as follows:
 - i. That, I am Kenyan citizen adult male of sound mind hence competent to swear this affidavit.



- ii. That, I was charged with offence of gang rape c/s 10 of the SOA NO 3 OF 2006 and sentenced to 20 years imprisonment
- iii. That I appealed at the Eldoret high court vide HCCR NO 56 of 2019 thus upon hearing and determination the sentence was pronounced to commence from the date of my arrest
- iv. That although the court complied with the said provisions, it failed to appreciate that the petitioner ought to have benefited from the minimum prescribed sentence by section 10 SOA.
- v. That, I am remorseful , repentant, reformed and rehabilitated, as I have learned hard lessons while in custody and now beg for leniency.
- vi. That, I am first offender hence qualifying to benefit from provision of article 50[2][p] of the constitution of Kenya 2010.
- vii. That, this court has the powers and authority under article 23[1] in reliance to 165 of the constitution to deal with the matter of denial of rights of this nature.
- viii. That it's my humble prayer that I be granted a fair opportunity to argue my application.
- ix. That all I have deposed herein is true to the best of my knowledge information and belief

2. It is very clear from the affidavit evidence that the doctrine of res-judicata is relevant to the present Application. Res-judicata mainly a principle in the realm of civil law denotes that once a court or tribunal has made a decision the parties cannot come back for another bite of the cherry. It is therefore obvious that the Applicant's Appeal on these same issues was heard and determined by the High Court and as a consequence this same forum cannot entertain jurisdiction on sentence. I should add that this kind of applications amount to an abuse of the process in the sense that the Applicant seeks to raise in a second action issues or facts which could and should have been and were indeed determined in the first cause of action. The Application is lost.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 26TH DAY OF MAY 2025

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R. NYAKUNDI

JUDGE

