



**JO v Republic (Miscellaneous Application 92 of 2020)  
[2025] KEHC 8437 (KLR) (17 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8437 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS APPLICATION 92 OF 2020  
RN NYAKUNDI, J  
JUNE 17, 2025**

**BETWEEN**

**JO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before this court is an application in the above-mentioned case which states as follows:
  - i. That may the honorable court be pleased to certify this application as urgent and be heard on priority basis
  - ii. That I am the applicant herein seeking for sentence re-hearing in a case of incest c/s 20 (1) as read with alternate count 11(1) of the *Sexual Offence Act* no. 3 of 2006 in criminal case number 11 of 2017 at CM’s court Eldoret and sentenced to life imprisonment
  - iii. That my first appeal at Nakuru High Court vide HCCRA No. 54 of 2018 at Eldoret dismissed and the conviction and sentence affirmed and subsequent appeal to the Court of Appeal at Eldoret has never been heard and thus my application for sentence re-hearing
  - iv. That, the Supreme Court ruling in Francis Karioko Muruatetu and Another declared mandatory sentences unconstitutional. This was applied by the Court of Appeal in the case of *Jared Koita Injiri v Republic* (2019) eKLR
  - v. That the Court of Appeal in *Bernard Mulwa Musyoka v Republic* criminal appeal no. 25 of 2016 affirmed that the Supreme Court did not prohibit courts below it from ordering sentence re-hearing in any matter pending before those courts
  - vi. That further grounds shall be adduced in the sworn supporting affidavit of Joseph Omollo among other grounds to be adduce during the hearing o this application



2. It is further annexed by an affidavit sworn by the said Joseph Omollo which states as follows:
  1. That I am Kenyan male adult of sound of mind and duly competent to swear this affidavit in a court of law
  2. That I am the applicant herein pursuant to the declaration of the Supreme Court ruling in *Francis Karioko Muruatetu and Another* in which the provisions of mandatory sentences were declared unconstitutional.
  3. That I was charged and convicted of incest c/s 20 (1) as read with alternate count 11(1) of the *Sexual Offence Act* no. 3 of 2006 in criminal case number 11 of 2017 at CM's court Eldoret and sentenced to life imprisonment
  4. That my first appeal to the High Court vide HCCRA No. 54 of 2018 at Eldoret was dismissed and the conviction and sentence affirmed
  5. That my subsequent appeal to the Court of Appeal at Eldoret has never been heard nor accorded me an appeal number
  6. That in regard to order (b) of the Supreme Court ruling in petition no 15 & 16 of 2015. I do seek for sentence re-hearing only
  7. That the Court of Appeal in *Bernard Mulwa Musyoka v Republic* criminal appeal no. 25 of 2016 affirmed that the Supreme Court did not prohibit courts below it from ordering sentence re-hearing in any matter pending before those courts
  8. That this Hon. Court is seized of competent jurisdiction under article 16(3) (b) of the *Constitution of Kenya* 2010 to hear and determine this matter
  9. That I am convict hence a pauper who cannot incur any costs for preparation of this application thus pray that such costs be waived
  10. That I swear that all I have deponed herein above is true and correct to the best of my knowledge, information and belief

### **Decision**

3. I have perused the record and there is sufficient evidence that the applicant has filed an appeal before the court of appeal due for consideration at an opportune time the same has not be withdrawn. This court has no jurisdiction to entertain the issue of re-sentencing. This application is dismissed. Filed closed
4. It is ordered.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 17<sup>TH</sup> DAY OF JUNE 2025**

**R. NYAKUNDI**

M/s Sidi for the State

