



REPUBLIC OF KENYA



KENYA LAW
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**Wawire v Republic (Miscellaneous Criminal Application
E021 of 2023) [2025] KEHC 8231 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8231 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL APPLICATION E021 OF 2023
RN NYAKUNDI, J
JUNE 12, 2025**

BETWEEN

BENARD SIMIYU WAWIRE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application dated 21st day of March 2023 seeking the following orders:

i. That the applicant be granted leave to appeal out of time

It is further annexed by an affidavit sworn which states as follows:-

- a. That I am the applicant in this matter hence competent to swear this affidavit
- b. That I was charged with the offence of manslaughter contrary to section 202 as read with section 205 of the penal code in Eldoret CM'S court on 20/11/2015 by Hon Obulutsa
- c. That prosecution witness testified and convicted and sentenced to 30 years by high court Judge Kimaru

Decision

- a. The record shows that initially that the applicant was tried, found guilty, convicted and sentenced to 30 years' imprisonment on 20th November 2015. He appealed to the high court in criminal appeal No. 167'B' of 2015 in which



the learned Judge pronounced himself as follows that the appeal on conviction is hereby dismissed:

“On sentence, the Appellant is on a firmer ground. The trial court acknowledged that the appellant was a first offender. Although the offence was serious and deserved a custodial sentence, this court is of the considered view that the sentence of thirty (30) years imprisonment was harsh and excessive taking into account the entire circumstances of the case. In the premises therefore, the custodial sentence of thirty (30) years imprisonment is set aside and substituted by a custodial sentence of this court of fifteen (15) years imprisonment. The sentence shall take effect from 20th November 2015 when the appellant was convicted by the trial court.”

2. Applying the doctrine of *pari-materia* from the civil branch of law, this application is lost for reasons of being *res judicata*. The elements of it being that:

- i. There was a former judgement or order which was final;
- ii. The judgement or order was on merit;
- iii. The judgement or order was rendered by a court having jurisdiction over the subject matter and parties; and
- iv. There had to be between the first and the second action identical parties, subject matter and cause of action.

3. The court in the case of *Kenya Commercial Bank Limited v Muiri Coffee Estate Limited & another* Motion no. 42 of 2014 [2016] eKLR (Muiri Coffee case) held as follows regarding the doctrine of *res judicata*:

“*Res judicata* is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stand as a conclusive statement as to those rights. It would appear that the doctrine of *res judicata* is to apply in respect of matters of all categories, including issues of constitutional rights.”

In *Okiya Omtatah Okoiti & another v Attorney General and Another* Petition no. 593 of 2013 [2014] eKLR where Lenaola J. (as the was) held as follows:

“For *res judicata* to be invoked in a civil matter therefore, the issue in a current suit must have been decided by a competent court. Secondly, the matter in dispute in the former suit between the parties must be directly or substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar. Thirdly, the parties in the former suit should be the same parties, or parties under whom they or any of them claim, litigating under the same title. (see the case of *Karia & another v Attorney General & others* (2005) 1EA 83). It therefore follows that the essence of the doctrine of *res judicata* is to bring an end to litigation and a party should not be vexed twice over the same cause. This was what was held with approval in *Omondi v National Bank of Kenya Ltd and others* (2001) EA 177.”

4. The doctrine of *res judicata* applies to the facts of this case given the litigation history in which the court concurrent jurisdiction determined the matter on merits conclusively. The application is dismissed under section 382 of the [Criminal Procedure Code](#).



5. It is ordered.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 12TH DAY OF JUNE 2025

.....

R. NYAKUNDI

JUDGE

