



REPUBLIC OF KENYA



**KENYA LAW**  
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**Auma v Republic (Criminal Revision E325 of 2024)  
[2025] KEHC 10168 (KLR) (15 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10168 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E325 OF 2024  
RN NYAKUNDI, J  
JULY 15, 2025**

**BETWEEN**

**MAUREEN AUMA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

Representation:

M/s Sidi for the State

1. What is pending before me for determination is a Notice of Motion Application in which the Applicant is seeking the following orders: -
  - a. That the applicant is seeking for sentence review in accordance to Article 50(2) (p) (q) of the Constitution of Kenya 2010.
  - b. That the applicant is seeking to be placed under probation for the remaining part of the sentence
2. The Application is supported by the annexed affidavit sworn by the Applicant herein who avers as follows:
  - a. That I was charged with offence of attempt of murder contrary to section 220(a) of the Penal Code, convicted and sentenced to 10 years imprisonment at Eldoret CM’S court
  - b. That I am remorseful, repentant, reformed and rehabilitated, as I have learned hard lessons while in custody and now beg for leniency
  - c. That I do beg that I be accorded to benefit with the provision of Article 50(2)(q) of the Constitution of Kenya 2010



- d. That during my time in prison I have been able to go through various theological and social programs with certificates which I shall tender at hearing thereof
- e. That it's my humble prayer that I be granted a fair opportunity to argue my application

### **Decision**

- 3. The genesis of this application is traceable to the decision of the court dated 12<sup>th</sup> April 2024, this court heard the issues on the merits including the benefit of pre-trial detention under section 333(2) of the *CPC*. The apex court in *John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others* (Petition 17 of 2015) and also in another court referenced at *Oyugi v IEBC & 8 others* [2022] eKLR observed that the doctrine of *res judicata* is based on the principle of finality which is a matter of public policy. The principle of finality is one of the pillars upon which our judicial system is founded and the doctrine of *res judicata* prevents a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.....”
- 4. The supreme court highlighted further in *IEBC v Maina Kiai & 5 others* [2017] eKLR on the key principles on *res judicata* as follows:
  - a. The suit or issue was directly and substantially in issue in the former suit.
  - b. That former suit was between the same parties or parties under whom they or any of them claim.
  - c. Those parties were litigating under the same title
  - d. The issue was heard and finally determined in the former suit.
  - e. The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.
- 5. Turning to this application the applicant has pleaded as follows based on mitigations:
  - a. That I am a first offender and thus beg for leniency
  - b. That I am remorseful, repentant, reformed and rehabilitated as I have learned to take responsibility of my own actions.
  - c. That I am a young woman and I pray to be re-constituted in the society to serve as a role model and a teacher/mentor to others of similar behavior
  - d. That I have served a substantial part of my sentence, more than a third of my sentence
  - e. That may this honorable court be pleased to consider the sentencing policy 2016 published by the Kenya Judiciary and establish the mitigating circumstances that would lessen the custodial sentence.
  - f. That I am praying to be admitted to non-custodial sentence for the remaining part of sentence
  - g. That more grounds to be adduced at hearing thereof and determination of this application
- 6. In applying the doctrine of *pari materia* as enshrined in *John Florence case (supra)* herein under the application lacks merit. “Just as the Court of Appeal in its impugned decision noted that rights keep on evolving, mutating and assuming multifaceted dimensions it may be difficult to specify what is



rarest and clearest. We however propose to set some parameters that a party seeking to have a court give an exemption to the application of the doctrine of res judicata. The first is where there is potential for substantial injustice if a court does not hear a constitutional matter or issue on its merits, it is our considered opinion that before a court can arrive at such a conclusion, it must examine the entirety of the circumstances as well address the factors for and against exercise of such discretionary power.”

7. This application is a mutation of the same old grounds incapable of granting the applicant any remedy be either in the Constitution or statute law. If this court was to entertain this application as expressed by the applicant in the notice of motion it would be promoting an abuse of the court process. I therefore dismiss it in its entirety.

**DATED AND SIGNED AND PUBLISHED VIA E-MAIL AND CTS AT ELDORET THIS 15<sup>TH</sup> DAY OF JULY 2025**

.....

**R. NYAKUNDI**

**JUDGE**

