



**Soita alias Freddy v Republic (Criminal Petition E078 of 2023)
[2025] KEHC 12521 (KLR) (9 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12521 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL PETITION E078 OF 2023
RN NYAKUNDI, J
SEPTEMBER 9, 2025**

BETWEEN

FREDRICK SOITA ALIAS FREDDY PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application dated 11th October 2023 where the Applicant/Petitioner is seeking the following orders:
 - a. That the petitioner is seeking for sentence review in accordance to Article 50(2) (p) (q) and section 362 & 364 of *the constitution* of Kenya 2010.
 - b. That, the applicant will be seeking a declaration by the court that he has reformed, rehabilitated and ready for re-integration back to society.
 - c. That, the applicant will be seeking a declaration by the court that the term he has been in custody be deemed sufficient punishment.
 - d. That, the applicant will be seeking a declaration by the court that his application has merits and qualifies to be heard.
2. The Application is based on the following grounds;
 - a. That, the applicant was charged, convicted and sentenced to death for the offence of robbery with violence c/sec 296 (2) of the penal code in criminal case file no. 2077 of 2017 on 30/11/2018.



- b. That, the Petitioner/Applicant appealed to the high court and the death sentence was substituted with 30years imprisonment vide 123/2018 on 23/02/2021 by Justice Francis Tuiyott (J).
 - c. That, the applicant is a first offender and he is remorseful, repentant and God fearing.
 - d. That, this hon. court has unlimited jurisdictions to hear and determine this application under the provisions of article 165(3) (b) of the constitution of Kenya 2010.
 - e. That, this hon. court has powers to hear and determine infringement of fundamental rights and award remedies under the provisions of sec 216 and 389 of the criminal procedure code on mitigation and the values of sentencing as provided for in the sentencing policy guidelines 2016 paragraph 4.1
3. The Petitioner/Applicant also filed mitigating grounds to the petition where the Applicant stated as follows;
- a. That I am a first offender and thus beg for leniency
 - b. That I am remorseful, repentant and reformed since I have learnt incarceration in prison to take responsibility of my own actions.
 - c. That, the sentence meted upon me was too harsh considering my mitigating factors and circumstances.
 - d. That more grounds to be adduced at hearing there-of and determination of this petition.
4. The Applicant sought orders from the mitigating grounds by stating as follows:
- a. That I am seeking orders for review of sentence under section 362,364(1) and 165 of the CPC CAP 75 laws of Kenya in reliance with article 27(1)(2)(4), 28, 22(1), 25(c), 50(1)(2) and 51(1) (2) of the constitution of Kenya among other enabling laws.
 - b. That, I am seeking orders for reduction of my sentence to lesser prison terms in reliance with petition NO. E017/2021 and consolidated petition NO. 97/2021 at Machakos and Mombasa high courts consecutively.
 - c. That may this hon. Court be pleased to consider the provisions of the sentencing policy guidelines 2016 published by the Kenya judiciary and invoke the provisions of article 165(3) a, b, d & 258(1) of the constitution of Kenya 2010 and reduce our sentence to a determinate term of sentence.
5. The application is supported by the annexed affidavit sworn by the petitioner who deponed as follows;
- a. That, I am a Kenyan citizen adult male of sound mind hence competent to swear this affidavit.
 - b. That, I was charged with the offence of robbery with violence c/sec 296 (2) of the penal code at Eldoret CM'S Court and was convicted and sentenced to serve death.
 - c. That, I appealed to the high court against conviction and sentence where conviction was upheld and sentence succeeded and the death sentence was substituted by 30 years' imprisonment on 23/02/2021 by Justice Francis Tuiyott (J).
 - d. That, the petition is filed in conformity with the judgement of Moses Barasa Kituyi Vs Rep, Pet. No. 07 Of 2018 At Eldoret.



- e. That, this hon. Court has competent, unlimited jurisdiction to hear and determine this application under the provisions of article 165(3) (b) of the constitution of Kenya 2010.
- f. That, I am remorseful, repentant, reformed and rehabilitated, as I have learned hard lessons while in custody and now beg for leniency.
- g. That, I do beg that I be accorded to benefit with the provision of Article 50(2) (q) of the Constitution of Kenya 2010.
- h. That it's my humble prayer that I be granted a fair opportunity to argue my petition.

Decision

6. The applicant herein was heard by the High Court and the judgment delivered on 23rd day of February 2021 in which Tuiyott J as he then was pronounced himself as follows:

The upshot is that only the appeal by the 2nd appellant Paulo Murunga Alfred succeeds. His conviction is quashed and the sentence imposed set aside. The appeals by the 1st and 2nd appellants on conviction fail. However, I set aside the death sentence imposed on them and instead impose a prison term of 30 years from the date of initial sentence.

7. This applicant was on death row before his sentence was reviewed on appeal to a custodial sentence of 30 years' imprisonment with a court of concurrent jurisdiction like the one I am presiding over at Eldoret. As the superior courts have expressed themselves for example in Samuel Kamau Macharia vs. Kenya Commercial Bank Ltd & 2 others held as follows:

“A court’s jurisdiction flows from either the constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”

8. The issues relating to the applicant’s sentence in these proceedings were appropriately dealt with by the High Court on appeal in the appellate forum. In my view was is being pleaded as a new issue is just vexing the court and is in violation of the doctrine of res judicata as pronounced by the apex court in Kenya Commercial Bank Ltd v Muiri Coffee Estate Ltd & Another that res judicata

“(52) Res judicata is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights...[55]..Res judicata entails more than procedural technicality, and lies on the plane of a substantive legal concept...”

9. This application is like a collateral attack on an earlier decision of this court which was seized with competent jurisdiction. It will be manifestly unfair for the applicant to raise similar issues on sentence and them relitigated afresh. If this court was to allow this application, there is no doubt it will bring the administration of justice into disrepute.

10. The judgment on conviction and sentence in the criminal proceedings before the trial court, and subsequently before the High Court, ascertained the facts which formed the basis of those proceedings and equally form the foundation of the present matter before me. These facts, having already been determined and a statutory punishment pronounced by the court, cannot be litigated again between



the State and the applicant. The comparative jurisprudence in *Frank v Mangun* 237 U.S 309, 59 L. Ed 969 which is also applicable to our circumstance recognized that:

A question of fact or law distinctly put in issue and directly determined by a court of competent jurisdiction cannot afterwards be disputed between the same parties. The principle is as applicable to the decisions of criminal courts as to those of civil jurisdiction

11. What was involved and determined in the former criminal proceedings, as evidenced by the record, the submissions, and the respective contentions of the State and the applicant, together with the subsequent decisions of the two courts, is conclusive. I am therefore of the view that I lack jurisdiction to permit this litigation on sentence to be reopened or for a new trial to be initiated. The prior judgment on conviction and sentence is binding on questions of fact and law distinctly raised and directly determined by both courts. The prosecutions at the trial court and on appeal were based on the same set of facts and evidence.
12. For those reasons, the instant application runs foul against the doctrine of *res judicata* hence the issue of jurisdiction to revisit the same subject matter. The proper recourse is the Court of Appeal of Kenya. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 9TH DAY OF SEPTEMBER 2025

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R. NYAKUNDI

JUDGE

