



**Sumba v Republic (Miscellaneous Criminal Application
E165 of 2025) [2025] KEHC 13547 (KLR) (1 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13547 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
MISCELLANEOUS CRIMINAL APPLICATION E165 OF 2025**

DR KAVEDZA, J

OCTOBER 1, 2025

BETWEEN

SPR NICHOLAS WANYONYI SUMBA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged and convicted on six counts under the [Kenya Defence Forces Act](#), 2012, and the Penal Code:
 - i. Count I: Committing a civil offence contrary to Section 133(1) of the [Kenya Defence Forces Act](#), specifically attempted murder under Section 220 of the Penal Code. On 11 June 2023, at approximately 7:15 pm, the appellant discharged two rounds of ammunition (7.62x39mm) from his assigned AK-47 rifle (Serial No. 62XXXX89) in an attempt to murder Captain J.N. Obwayo (130634) at Nanyuki Barracks, Laikipia County.
 - ii. Alternative to Count II: Conduct prejudicial to good order and service discipline under Section 121 of the [Kenya Defence Forces Act](#). The appellant assaulted Captain J.N. Obwayo using his assigned rifle during the same incident.
 - iii. Count III: Conduct prejudicial to good order and service discipline under Section 121 of the [Kenya Defence Forces Act](#). On 11 June 2023, at around 5:00 pm, the appellant over-socialized with commissioned officers (Major H.W. Khisa, Major S.W. Lugadiru, and Captain J.N. Obwayo) at an unauthorized private party in Major Lugadiru's accommodation, breaching military protocol.
 - iv. Count IV: Leaving his sentry post without being properly relieved, contrary to Section 69(1)(a) (iii) of the [Kenya Defence Forces Act](#). On 11 June 2023, at approximately 6:00 pm, the appellant abandoned his sentry duties at Nanyuki Barracks.



- v. Count V: Being drunk while on sentry duty, contrary to Section 69(1)(a)(ii) of the [Kenya Defence Forces Act](#). The appellant consumed alcohol while deployed on sentry duties at the same location and time.
 - vi. Count VI: Deliberate discharge of a firearm, contrary to Section 123 of the [Kenya Defence Forces Act](#). The appellant intentionally discharged two rounds of ammunition from his rifle during the incident at 7:15 pm.
2. He was sentenced to 15 years' imprisonment for Count I and 15 years' imprisonment for Count II (Alternative). For Count III, he received 1 year's imprisonment, while for Count IV and Count V, he was sentenced to 4 years' imprisonment each. Additionally, for Count VI, he was sentenced to 1 year's imprisonment. The sentences for Counts I, II, III, and VI are running concurrently, whereas the sentences for Counts IV and V are running consecutively.
 3. His appeal before this court was partially allowed. In the following terms: The sentence in Count I, alternative to Count II, Count III, Count IV, Count V, and Count VI were maintained. The sentences imposed by the trial court was to run concurrently from the 11th June 2023 the date of the appellant's arrest having spent the entirety of the trial in remand custody.
 4. He has filed the present undated application received on 15th September 2025 seeking sentence review. The grounds raised are that he is the sole breadwinner in his family. Since his incarceration, his family has suffered psychological trauma. He is remorseful for the offence committed. He has undergone rehabilitation. He urged the court to revise the sentence of the trial court to a non-custodial sentence.
 5. From the record, the applicant filed an appeal against his conviction and sentence which was heard and determined by this court. This court is therefore functus officio. The right forum for the applicant is the Court of Appeal.
 6. In the circumstances, the application is dismissed.

Order accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 1ST DAY OF OCTOBER 2025

.....

D. KAVEDZA

JUDGE

