



**Mwaniki v Republic (Criminal Revision E190 of 2024)
[2025] KEHC 15016 (KLR) (22 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15016 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL REVISION E190 OF 2024
DKN MAGARE, J
OCTOBER 22, 2025**

BETWEEN

BANARD KAMAU MWANIKI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This is a ruling over an application dated 10.9.2025 and filed by the Applicant based on the reasoning of the Supreme Court in *Muruatetu & another v Republic; Katiba Institute & 4 others (Amicus Curiae)* [2021] KESC 31 (KLR). On the basis of the said decision, the applicant sought to review the life sentence imposed on him. This was said to be pursuant to Article 50(2)(p)(q). He sought to be released on probation orders having taken into consideration section 333(2) of the Criminal Procedure Code. The same seeks to review the decision of the court in SO 16 of 2010.
2. However, the applicant also filed Revision E038 of 2023 over the same subject matter. It is the same application, almost word for word. The matter is an affront to the doctrine of *res judicata*.
3. In the case of *Attorney General & another ET vs (2012) eKLR* it was held that;

“The courts must always be vigilant to guard litigants evading the doctrine of *res judicata* by introducing new causes of action so as to seek the same remedy before the court. The test is whether the plaintiff in the second suit is trying to bring before the court in another way and in form of a new cause of action which has been resolved by a court of competent jurisdiction. In the case of *Omondi s NBK & Others (2001) EA 177* the court held that “parties cannot evade the doctrine of *res judicata* by merely adding other parties or causes of action in a subsequent suit”.

In that case the court quoted Kuloba J, (as he then was) in the case of *Njanju vs Wambugu and another Nairobi HCC No. 2340 of 1991 (unreported)* where he stated: If parties were



allowed to go on litigating forever over the same issue with the same opponent before courts of competent jurisdiction merely because he gives his case some cosmetic face lift in every occasion he comes to court, then I do not see the use of doctrine of res judicata.....”.

4. In essence therefore, the doctrine implies that for a matter to be res judicata, the matters in issue must be similar to those which were previously in dispute between the same parties and the same having been determined on merits by a court of competent jurisdiction. The court in the English case of *Henderson v Henderson* (1843-60) All E.R 378, observed thus:

“...where a given matter becomes the subject of litigation in, and of adjudication by a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward as part of the subject in contest, but which was not brought forward only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special case, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.”

5. Res judicata applies to applications just like suits. In the case of *Julia Muthoni Githinji v African Banking Corporation Limited* [2020] eKLR the court stated thus:

14. After a careful reappraisal of the application for injunction before the lower court, I have come to the conclusion that the application was resjudicata and the entire suit was subjudice as there was an active pending suit before a court of competent jurisdiction being Nakuru ELC No. 272 of 2017. All issues raised in the suit before the subordinate court could be properly litigated in the suit pending before the ELC. The filing of the suit by the appellant in the subordinate court when she had a similar suit in the ELC Court was an abuse of the Court process which the Court cannot countenance.

6. Similarly in *Maumbwa & 3 others v Kisemei* (Civil Appeal E009 of 2021) [2022] KEHC 10416 (KLR) (26 May 2022) (Judgment) *Maumbwa & 3 others v Kisemei* (Civil Appeal E009 of 2021) [2022] KEHC 10416 (KLR) (26 May 2022) (Judgment) the court stated as doth:

By comparing the two applications and the authorities on res judicata, it is clear to me that the issues being canvassed in the application dated 11th January 2021 is res judicata. The issues in issue in that application were directly and substantially in issue in the application dated 13th September 2017. These issues relate to the same parties and these issues have been tried by a competent court. To my mind to bring the same issues between the same parties that have been determined by a court of competent jurisdiction is an abuse of the court process.

7. Though its origin is civil in nature, it avoids parties having the same cases. The filing of multiple application offends the principle of finality in judicial decisions. In the case of *John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others* [2021] KESC 39 (KLR), the Supreme Court stated as follows regarding finality:

The doctrine of res judicata was based on the principle of finality which was a matter of public policy. The principle of finality was one of the pillars upon which the judicial system was founded and the doctrine of res judicata prevented a multiplicity of suits, which would



ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it ensured that litigation came to an end, and the verdict duly translated into fruit for one party, and liability for another party, conclusively.

If the Supreme Court were to find that the doctrine did not apply to constitutional litigation, the doctrine could lose much of its legitimacy and validity. Constitutional tenets permeated all litigation starting with the application of article 159 of *the Constitution* in both civil and criminal litigation, and its application embedded in all procedural statutes. Further article 50 of *the Constitution* on right to fair hearing and article 48 of *the Constitution* on access to justice were fundamental rights to which every litigant was entitled to. Such a holding could lead to parties, that whenever they needed to circumscribe the doctrine of res judicata, they only needed to invoke some constitutional provision or other.

8. Consequent upon the foregoing, having determined E038 of 2023, this application is bad for being res judicata. It is accordingly dismissed.

Determination

9. In the upshot, I make the following orders: -
 - a. The undated application filed on 18.06.2024 is struck out for being res judicata.
 - b. The file is closed.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 22ND DAY OF OCTOBER, 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of:-

Mr. Kimani for the State

Pro se Applicant – present

PC Franklin present

Court Assistant – Michael

