



**Mulwa v Republic (Criminal Revision E121 of 2024)
[2026] KEHC 88 (KLR) (13 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 88 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E121 OF 2024
RN NYAKUNDI, J
JANUARY 13, 2026**

**IN THE MATTER OF THE ESTATE OF FRANCIS KIMUTAI
TOO ALIAS FRANCIS KIMUTAI KIPTOO (DECEASED)**

BETWEEN

WESLEY CHIRCHIR MULWA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application which is pleaded as follows by way of a notice of motion expressed to be brought pursuant to 2, 3(a), 19(2), 22(1), 23(1), 27(1)(4), 28, 50(2)(p)(q), 159(2) and 165 of *the Constitution* and in the matter of Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2010 and in the matter of Section 203 as read with 204 of the Criminal Procedure Code Cap 75 Laws of Kenya and in the matter of Section 216 and 329 of the Criminal procedure Code Cap 75 Laws of Kenya. The application is seeking the following orders:
 - a. Revision of sentence in Criminal case No. 2 of 2002 at Kisumu for the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code where I was sentenced to suffer death.
2. Which application is based on the following grounds:
 - a. That I was charged and convicted for an offence of murder contrary to section 203 as read with Section 204 of the Penal Code in Criminal Case No. 4 of 2007 at Eldoret and sentenced to life imprisonment.
 - b. That under *the Constitution* of Kenya under Article 50(2)(p)(q) an Applicant has a right to benefit from the least severe sentence and have his sentence reviewed.



- c. That life sentence contravenes Section 216 and 389 of the Criminal Procedure Codes on mitigation and the values of sentencing as in the Sentence Policy Guidelines 2016 paragraph 4:1.
 - d. That the High Court has competent jurisdiction to hear and determine this application under Article 165(3)(b) of *the Constitution* of Kenya 2010.
 - e. That under the provisions of *the Constitution* of Kenya 2010 and Practice and Procedure Rules 2010 this Court has power to hear and determine infringements of fundamental rights and award remedies.
3. The application is supported by an affidavit sworn by the Applicant who deposed as follows:
- a. That I was charged and convicted for an offence of murder contrary to Section 203 as read with Section 204 of the Penal Code in Criminal Case Number 4 of 2007 at Eldoret and sentenced to life imprisonment.
 - b. That under *the Constitution* of Kenya under Article 50(2)(p)(q) an Applicant has a right to benefit from the least severe sentence and have his sentence reviewed.
 - c. That life sentence contravenes Section 216 and 389 of the Criminal Procedure Codes on mitigation and the values of sentencing as in the Sentence Policy Guidelines 2016 paragraph 4:1.
 - d. That the High Court has competent jurisdiction to hear and determine this application under Article 165(3)(b) of *the Constitution* of Kenya 2010.
 - e. That under the provisions of *the Constitution* of Kenya 2010 and Practice and Procedure Rules 2010 this Court has power to hear and determine infringements of fundamental rights and award remedies.
 - f. That I am pauper thus I pray for a waiver of the cost of preparation of this application.

Decision

4. This application on revision is being canvassed within the provisions of *the constitution* and enabling statutes. I have reviewed the original judgement of the court dated 7.6.2018 in which the learned Judge pronounced herself as follows: As noted earlier, malice aforethought takes various forms. Evidence that an accused person intended to cause grievous harm either to the deceased or to another person is sufficient proof of malice aforethought. In this case, the very nature of the injuries sustained by the deceased leave no doubt that the assault was deliberate and brutal. It is evident that in attacking the deceased in the manner that he did the accused must have intended either to the deceased or cause him grievous bodily harm. It is therefore my finding that in attacking the deceased, the accused had malice aforethought. In view of the foregoing reason and finding, even without consideration the probative value or otherwise of the alleged declaration made by the deceased, I have come to the conclusion that the prosecution has proved its case against the accused person beyond any reasonable doubt. I thus enter a finding of guilty and accordingly convict the accused of the offence of murder as charged.
5. From this decision the petitioner was sentenced to life imprisonment in a committal warrant dated 27.6.2018. It is also apparent that on 29.10. 2020 the petitioner's application on revision was dismissed by Omondi J as she then was for want of merit.



6. This court takes the following position that it has no jurisdiction to entertain the aforesaid revision application on re-sentencing. This court borrowing the words in the province of civil law under Section 7 of the Civil Procedure Act this matter is re-judicata.
- a. The issue of re subjudice and res judicata are pure points of law that can be mounted as preliminary objections and in deciding the two issued the court is perfectly entitled to act on the pleadings and other relevant material presented before it
 - b. Without much strain, it is clear that the prayers being sought in the present summons are similar to those in the summons in the earlier suit. It is also admitted that the plaintiff and other plaintiffs have preferred to appeal against the earlier decision and that the appeal is pending before the court of Appeal
 - c. Re judicata relates to a matter already adjudicated upon or a matter on which judgment has been pronounced and it is applicable to interlocutory application in that a party whose application has been dismissed is barred from filing a similar application on the same grounds
 - d. The doctrine of re judicata is based on three maxims first that no man should be vexed twice over the same cause, secondly, that it is in the interest of the state that there should be an end to litigation and thirdly that a judicial decision must be accepted as correct (See the case of Abdul Kassim Hassanli Gulamhusein Khala v Southern Credit Banking corporation Ltd, Mombasa High Court Civil case number 270 of 2005 (Sergon J on 23 May 2006
7. For the principle of res-judicata to apply in this application, I have relied heavily on the decision by Githua J and subsequently the revision on resentencing before Omondi J as she then was presiding over the proceedings on the same subject matter involving the Applicant. In law, any litigation must come to an end and once a decision has been reached by a competent court duly constituted under Article 50 (1) of the constitution, it cannot be reopened so that it can be restarted all over again unless the decision reached has been reviewed, or appealed against by a competent court. Therefore, this application is moot and the same is dismissed for want of merit.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 13TH DAY OF JANUARY, 2026

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R. NYAKUNDI
JUDGE

