



**Samoei v Republic (Criminal Miscellaneous Application
E486 of 2024) [2026] KEHC 1067 (KLR) (3 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1067 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL MISCELLANEOUS APPLICATION E486 OF 2024**

RN NYAKUNDI, J

FEBRUARY 3, 2026

**IN THE MATTER OF SENTENCE REVIEW UNDER SECTION 362
AS READ WITH SECTION 364 OF THE CRIMINAL PROCEDURE
CODE IN RELIANCE TO ARTICLE 50(2) (P) OF THE C.O.K.**

BETWEEN

PHILIP KIBET SAMOEI PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. Before Court is a notice of motion expressed to have been brought under Article 50(2) (P) (Q) of *the Constitution* of Kenya 2010. The application is seeking for the following orders:
 - a. That the petitioner is seeking for a judicial review order for his sentence of 40 years under Section 362 as read with Section 364 of the CPC and in reliance to Article 50(2)(q) of COK 2010 for being unusually harsh and excessive.
 - b. That the petitioner is seeking for orders for a reduction of his sentence on the basis of new existing circumstances of his case together with mitigation statement which was not considered on his sentencing.
 - c. That the petitioner is seeking for a sentence reduction in conformity with emerging jurisprudence and the progressive objectives of sentencing.
 - d. That the petitioner is seeking for a sentence review in considering of the productive adult life which is being ruined by the long sentence he is serving.
 - e. That the petitioner is seeking for redress under Article 23(3) of *the Constitution* to address *the Constitution* violations committed against him.



- f. That the petitioner is praying to be present during the determination of this petition.
2. Which application is supported by the Applicant's affidavit with grounds set out as follows:
- a. That I am a Kenyan citizen who is an adult male of sound mind hence competent to swear this affidavit.
- b. That I was charged with the offence of Incest contrary to Section 20 (1) of the S.O.A Act No. 3 of 2006, was sentenced to serve a Life sentence by CM's Court at Eldoret
- c. That the Petitioner appealed this decision and was partially successful on sentence as the life sentence he was serving was substituted with 40 years at Eldoret High Court by Hon. Justice Nyakundi.
- d. That he is approaching this court to seek for a judicial review of his sentence under Section 362 as read with Section 364 of the CPC and in reliance to article 50(2)(q) of COK on the grounds.
- e. That the sentence of 40 years that was imposed on him by the High Court is still an unusual sentence when compared to the trends in authorities of Evans Nyamari Ayako -Kisumu where 30 years was defined as a life sentence. On this aspect the sentence is unfit excessive and disproportionate. The petitioner prays that the court should apply the principle of proportionality through re-sentencing him to a reduced sentence since the law is no longer rigid with regard to minimum mandatory sentences (G.K V Rep Criminal appeal no,134 of 2016 (2021) KECA232) KLR. The petitioner's appeal hearing violated his right under article 50 (2) (p) of COK for a reduced sentence.
- f. That the aggravating circumstances in his case were given more consideration which is evidenced by the stiff sentence of 40 years he is serving. I am praying that the court should consider mitigation factors such as was a first offender who is remorseful and seeks for leniency at arriving at a fit or appropriate sentence in his case. The court must show it has taken on board mitigation to exercise its discretion in his case. (Dismas Wafula Kilwake VS R (2019) eKLR. This act limited his right to a fair trial Article 25 (c). The sentencing policy recommend his 40 years be reduced by more than 50% to be about 20 years or lesser after considering his mitigation.
- g. That the sentence objective that seem to have been applied to his case had the purpose of tormenting him; with the new jurisprudence that is taking into consideration of new sentencing objectives where shortened sentence period are necessary in achieving this objectives such as reintegration, reconciliation I urge the court to adopt this trend in my case by ordering for a sentence review.
- h. That the court should take judicial notice that life expectancy is about 70 years. Am serving a 40 years sentence at my current age of 44 years which surpasses the life expectancy. The court should consider this reality as I am at my most productive life which is being ruined by this excessive sentence, court's intervention is invited

Decision

3. The Applicant is seeking leave of this court to have a second bite of the cherry on the same issues which have been addressed by this very same court therefore rendering the entire motion res judicata. This doctrine although more pronounced and applicable in the realm of Civil Law it is also applicable in the branch of criminal law if the facts meets the threshold under Section 7 of the *Civil Procedure Act*.



The Supreme Court in *Kenya Commercial Bank Limited v Muiri Coffee Estate Limited & Another*, motion No. 42 of 2014 [2016] eKLR state as follows:

“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.... Res judicata entails more than procedural technicality, and lies on the plane of a substantive legal concept....”

4. This issue was also discussed further in *Haslbury’s Laws of England*, Paragraph 1174. However, of importance to this discussion is the wording of Section 7 of the *Civil Procedure Act* whose import in *pari materia* in certain cases in realm of criminal law is applicable in the same vein. The essential elements are that:

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court. Explanation —

- (1) The expression “former suit” means a suit which has been decided before the suit in question whether or not it was instituted before it. Explanation —
- (2) For the purposes of this Section, the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court. Explanation -
- (3) The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other. Explanation —
- (4) Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. Explanation —
- (5) Any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused. Explanation —
- (6) Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.” (See also *John Florence Maritime Services Limited & Another v Cabinet Secretary Transport & Infrastructure & 3 Others* (Petition 17 of 2015) [2021] KESC 39 (KLR) (Civ) (6 August 2021).

5. Essentially, *res judicata* in criminal cases, often applied as issue estoppel or *autrefois acquit/convict*, prevents the re-litigation of issues or charges already decided by a final judgment on the merits. It ensures legal certainty, protects against double jeopardy, and bars subsequent prosecution if the same parties and cause are involved. The key aspects of *res judicata* in criminal law include: Finality: The doctrine applies only to final decisions, meaning no further appeals are pending. Issue Estoppel: If a specific issue of fact or law was directly determined in a previous proceeding, it cannot be contested again, even if the charge is different. *Autrefois Acquit/Convict*: A person cannot be tried again for the



same offense if they were previously acquitted or convicted of it. Exceptions: Res judicata does not apply if the original judgment was obtained through fraud or if the subsequent proceeding is a legitimate appeal. Scope: While rooted in civil law, it applies to criminal law to prevent harassment and maintain consistency in judicial decisions.

6. What this means the doctrine reduced to its simplest terms means a matter judicially acted upon or decided; an issue settled by judgment in providing that a matter judicially settled stays settled its purposes are the reduction of court congestion by eliminating disputes already resolved, and the protection of litigants from the expense and harassment of repeated lawsuits. It is definitely therefore a valid defence in our criminal law but somewhat has been overshadowed by the more famous principle of double jeopardy.
7. The facts of this case are deducible from the record that this very same Court on 27th day of January 2023 ruled as follows:

It is acknowledged in the sentencing regime that though deterrence is an important factor in the interest of society, however it is not always the most critical nor the only factor to carry more weight than rehabilitation or reformation of the offender. Without attempting to laydown a general rule on minimum mandatory sentences, given the guiding principles stated above I am persuaded to exercise discretion in interfering with the decision of the trial court in sentencing by substituting the life imprisonment with a definite custodial sentence of 40 years to balance the gravity of the crime and punishment for it. The aforesaid sentence commence on the 20th December, 2011 to give effect to the provisions of section 333 (2) of the Criminal Procedure Code. As a consequence the committal warrant be so amended to inflict the variation and review order on sentence. In sum the appellant appeal in conviction failed and the partial success on sentence as dully substituted.

8. This fundamental doctrine of res judicata bars the Applicant from re-litigating of issues on sentence already adjudicated by this court. The application on review of sentence is dismissed for want of merit under Section 382 of the Criminal Procedure Code.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 3RD DAY FEBRUARY, 2026

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R. NYAKUNDI
JUDGE

