

REPUBLIC OF KENYA

IN THE HIGH Court OF KENYA AT ELDORET

CRIMINAL REVISION NO. E205 OF 2025

DAVID WANJALA WEPUKHULU Applicant

VERSUS

REPUBLIC

RESPONDENT

Coram: Before Justice R. Nyakundi

M/s Sidi for the State

RULING

1. Before this Court is a Notice of Motion expressed to be have been brought under Articles 27, 28, 47, 48, 50(2)(p)(q), 159(2)(a) & 165(3)(b) of the constitution of Kenya 2010 and Section 362 & 364 of the Criminal Procedure Code and any other enabling provisions of the law dated on 19th day of August 2025 seeking the following orders:
 - a. *That I was charged and convicted for an offence of manslaughter contrary to section 202 as read with section 205 of the penal code under Criminal Case No.1221 of 2015 and sentence to 20 years imprisonment at CM'S Court Eldoret by Hon. Wanjiku on 10th day of December 2015.*
2. Which application is made on the following grounds:
 - a. *That I am remorseful and I pray for pardon promising to be law abiding citizen while outside.*
 - b. *That, the Applicant is remorseful on the offence committed.*
 - c. *That, the Applicant is a first offender.*
 - d. *That I am reformed and rehabilitated citizen I pray the honorable Court to consider me for a lesser sentence or non- custodial sentence*

- e. *That since my conviction and sentencing I have undergone various rehabilitation programs offered herein prison hence promising to use the skills while integrated back to the society.*
3. The application is supported by the supporting affidavit of by David Wanjala Wepukhulu who deponed as follows:
- a. *That I am a Kenyan male adult of sound mind and dully competent to swear this affidavit in a Court of law.*
- b. *That I was charged and convicted for an offence of manslaughter contrary to section 202 as read with section 205 of the penal code under criminal case No.1221 of 2015 and sentence to 20 years imprisonment at CM'S Court Eldoret by Hon. Wanjiku on 10th day of December 2015.*
- c. *That I am remorseful for the offence committed.*
- d. *That, the Applicant is a first offender.*
- e. *That during commission of the offence I was not aware about the law for now I am aware about the law thus humble reformed and repentant thus praying for the hon. Court to review my 20 years sentence to a lesser sentence.*
- f. *That I have served nine 9 years out of the 20 years sentence thus praying for the review of my sentence to at list a lesser one so that I can gate chance to go back to the society.*
- g. *That while in prison I have undergone various rehabilitation programs as a way of reformation when given a chance back to the society I will be a helpful to them.*
- h. *That the incident was un-equivocate but not planned move.*
- i. *That may the honorable Court be pleased to grant me a lesser sentence since I have learned my mistake in the hardest way promising that given a chance back to the society I will be a new David.*

- j. That may this Court also invoke section 333(2) of the Criminal Procedure Code to consider the nine (9) months that I spent in remand custody.*
- k. That I have no issue with the complainant family since we settled with them thus they are normally visiting me here at prison.*

Decision

- 4. This Applicant has been in the corridors of this Court severally re-litigating basically the same issues. I recall that on 29th April 2025 this same very Court entertained an application which was undated and at the end of it all profoundly **sow** I ruled as follows:
 - a. Notably, Article 50(2)(p) as read with 50(2)(q) of the Constitutions provides this Court with jurisdiction to review a sentence as follows; (2) Every accused person has the right to a fair trial, which includes the right- (p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and (q) if convicted, to appeal to, or apply for review by, a higher Court as prescribed by law. Section 364(5) of the Criminal Procedure code provides as follows; (5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.*
 - b. As the Applicant had already petitioned the conviction and sentence, this Court is bereft of jurisdiction to entertain the present application. Conceding that the doctrine of res judicata is available in some criminal proceedings, the problem remains for the Courts to determine the extent to which it may be applied, for the simple reason the cases and authorities cited in reference to criminal law are not in harmony as to the proper place of this plea as a bar in a criminal action.*

Consequently, from the above observations, this petition is dismissed for want of jurisdiction.

5. I want to emphasize from this passage it is not competent for the Court, in the case of the same question arising between the same parties, to review a previous decision not to open to appeal. If the decision was wrong, it ought to have been appealed from in due time. The Applicant lacks the *locus standi* to re-litigate on sentence over and over again for the material question has been answered on the merits. Guided by these principles the doctrine of Estoppel operates as a bar to this matter.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 9TH DAY OF MARCH 2026

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R. NYAKUNDI
JUDGE