

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT GARISSA
MISC. CRIMINAL APPLICATION NO. E001 OF 2026

JAMILA MAALIM HUSSEIN EYMOI.....
APPLICANT

VS

REPUBLIC.....
RESPONDENT

RULING

1. The applicant herein was charged in Criminal Case No. E163 of 2021 in the SPM's Court at Mandera Law Courts with the following:
2. Count I: Being in possession of a specified firearm without a firearm certificate c/sec 4A (1) (a) as read with section 4A(2)(a) of the Firearms Act Cap 114 Laws of Kenya. Particulars were that on 20.04.2021, at around 1800hrs at Busley in Mandera East Sub County within Mandera County of the Republic of Kenya, she was found in possession of a firearm make AK47 Rifle Serial No. 1974EP3373 fitted with one magazine which was loaded with 13 rounds of ammunition of caliber 7.62mm special without a firearm certificate as required by law.
3. Count II: Being in possession of ammunition without holding a firearm certificate c/sec 4(2) (a) as read with section 4(3) (a) of the Firearms Act Cap 114 Laws of Kenya. Particulars were that on 20.04.2021, at around 1800hrs at Busley in Mandera East Sub County within Mandera County of the Republic of Kenya, she was found in possession of 13 rounds of ammunition of calibre

7.62mm special without holding a firearm certificate as required by law.

4. Count III: Entering Kenya through a place not designated as a place of entry c/regulation 15(2) (a) as read with Regulation 57 of The Kenya Citizenship and Immigration Regulations, 2012. Particulars were that on 20.04.2021, at around 1800hrs at Border Point III along Kenya Somalia Border, she was found having crossed from Bulla Hawa Somalia to Mandera Kenya through a place not designated as a point of entry.
5. She was tried and convicted of Count I and II and sentenced to 20 years and 10 years' imprisonment respectively. She was acquitted on Count III.
6. Being dissatisfied with the determination of the trial court, she appealed against both her conviction and sentence before the High Court vide Criminal Appeal Case No. E050 of 2022 where the court substituted the 20-year sentence with 7 years in Count I and maintained the 10 years' imprisonment in Count II and the same was to start running from the date of conviction being 01.08.2022. Further, the sentences were to run concurrently.
7. She again moved the court vide Misc. Criminal Application No.E007 of 2025 seeking for review of her sentence downwards and consequently release her as she was only remaining with two years to complete her sentence. On 8-4-2025, the court dismissed her application save for reduction of the sentence by 6 months and 17 days being the period spent in remand custody.

8. She has since filed the current application dated 19-12-2025 urging that this court considers reviewing her sentence and set her free noting that she has less than 1 year to complete her sentence. That she has since been rehabilitated and therefore ready to reintegrate back to the society. She urged that she is deeply remorseful for her actions and further, that being a first offender, she deserves another chance. She stated that she is a mother of 5 children and that the minors are in dire need of parental care. That if it is agreeable to the court, she be granted an opportunity to serve the remainder of the term under probation.
9. At the hearing of the application, the applicant submitted orally that having partially served her sentence, this court be gracious to confer upon her a non-custodial sentence on the remainder of the term. That this court is endowed with the powers to allow her application by placing her under a probation programme so that she can start her life afresh.
10. The learned prosecutor on the other hand opposed the said application urging that given that the applicant previously appealed her conviction and sentence before this court and partially succeeded, this court is therefore *functus officio*. She urged that the offence under which the applicant was charged is serious and does not deserve CSO sentence. Therefore, this court was urged to dismiss the application for the same was in want of merit.

11. I have considered the application together with the oral submissions by the parties. The main issue for determination is whether the applicant should serve the remainder of her sentence on probation?
12. It is not in dispute that having been charged and convicted, the applicant appealed against both the conviction and sentence before this Court where the court substituted the 20-year sentence with 7 years in Count I and 10 years' imprisonment in Count II to run concurrently from the date of conviction being 01.08.2022. Undeterred, she kept filing subsequent applications seeking review of her sentence on grounds that she has reformed.
13. My humble view is that once a judge or a judicial officer has pronounced a sentence, he/she becomes *functus officio*. It then follows that if the sentence is illegal or inappropriate, the only court which can address the same is an appellate court. It therefore follows that when this court substituted the 20-year sentence with 7 years in Count I and 10 years' imprisonment in Count II from the date of conviction being 01.08.2022, the applicant if not satisfied ought to have appealed the same. Besides a similar application was dismissed on 8-4-2025. This is a classic case of abuse of the court process.
14. Consequently, this court at this stage is *functus officio* and accordingly, the application herein is dismissed for lack of merit.

Dated, signed and delivered virtually this 17th day of March 2026

.....

J.N.ONYIEGO
JUDGE