



**Kendagor v Republic (Miscellaneous Criminal Application
E156 of 2024) [2026] KEHC 4290 (KLR) (31 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4290 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL APPLICATION E156 OF 2024
RN NYAKUNDI, J
MARCH 31, 2026**

BETWEEN

BENJAMIN KENDAGOR APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application by the Applicant seeking the following orders:
 - a. That the applicant is seeking sentence review in accordance to Art 50(2) (p)(q) of *the constitution* of Kenya.
 - b. That the applicant is seeking to be placed under probation for the remaining part of the sentence.
 - c. That Section 4(1)(a)(b) of the probation offenders Act 64 Law of Kenya
 - d. I beg to present during hearing thereof.
2. The application is based on the following mitigating grounds:
 - a. That I am a first offender and thus beg for leniency.
 - b. That I am remorseful, repentant and reformed as I have learned to take responsibility of my own actions.
 - c. That I am a young man and I pray to be reconstituted in the society to serve as a role model and a teacher/mentor to others of similar behaviour.
 - d. That the sentence meted upon me was harsh considering the mitigating factors.



- e. That may this honorable court be pleased to consider the sentencing policy of 2016 published by the Kenya Judiciary and establish the mitigating circumstances that would lessen the custodial sentence.
 - f. That I am praying to be admitted to non-custodial sentence for the remaining part of sentence.
 - g. That more grounds to be adduced at hearing thereof and determination of this application.
3. The application is supported by an affidavit of the applicant who deponed as follows: -
- a. That I am Kenyan Citizen of sound of mind hence competent to swear this affidavit.
 - b. That I was charged with offence of murder contrary to section 203 as read with 204 of the penal code, convicted and sentenced to 25 years' imprisonment at Eldoret High Court.
 - c. That I am requesting for sentence review of the 5 years remaining in my sentence to be substituted with non-custodial sentence.
 - d. That I am remorseful, repentant, reformed and rehabilitated as I have learned hard lessons while in custody and now beg for leniency.
 - e. That I am a young man with a young family who solely depends on me.
 - f. That I do beg that I be accorded to benefit with the provision of Art 50(2)(q) of *the constitution* of Kenya 2010.
 - g. That during my time in prison I have been able to go through various Theological and Social programmes with certificates which I shall tender at hearing thereof.
 - h. That it is my humble prayer that I be granted a fair opportunity to argue my application.

Decision

- 4. The applicant seeks review of sentence so that he can be placed on probation of the remainder of the period. Fortunately, this court was involved on the trial of the applicant and finally made a finding on guilty, conviction, and sentence.
- 5. From the application and affidavit evidence there is no substantial and compelling circumstances to review the sentence imposed by this court. The best forum could have been in the Court of Appeal. This is a case where the principle of res-judicata from the realm of civil law is applicable in determining the issues at stake. The principle of res-judicata was considered "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 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 cases, not only to point upon which the court was actually required by the parties to form an opinion and pronounce a judgement, 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.
- 6. The application for review is therefore res judicata as is dismissed with no orders as to the costs. It is so ordered.



DATED, SIGNED AND DELIVERED VIA EMAIL AND CTS AT ELDORET THIS 31ST DAY OF MARCH 2026

.....

R. NYAKUNDI

JUDGE

