Auto v Republic (Criminal Miscellaneous Application E064 of 2025) [2026] KEHC 6174 (KLR) (11 May 2026) (Ruling)

Neutral citation: [2026] KEHC 6174 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT VIHIGA

CRIMINAL MISCELLANEOUS APPLICATION E064 OF 2025

RN NYAKUNDI, J

MAY 11, 2026

IN THE MATTERS OF S.O CRC NO.28 OF 2018 AT SPM'S VIHIGA

AND

IN THE MATTERS OF HCCRA NO. E011 OF 2024 AT VIHIGA

AND

IN THE MATTERS OF PROBATION AND AFTER CARE SERVICES [PACS]

AND

IN THE MATTERS OF PARAGRAPH 4.1, 4.2 SENTENCING POLICY GUIDELINES [SPGS] REVISED 2023

AND

IN THE MATTERS OF PROBATION OF OFFENDERS ACT CAP 64 AND THE COMMUNITY SERVICE ORDER CAP 93

AND

IN THE MATTERS OF ARTICLE 25(C), 29(F), 50(2)(P),2 2, 23(3), 159, 163(3)(9), 24(1)(E) CONSTITUTION OF KENYA 2010 AND SECTION 323, 216, 329 OF THE CRIMINAL PROCEDURE CODE

BETWEEN

JOHN AUTO ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

(Being an application for probation and after care service from the orders, decision and findings of Hon. J. Kamau (J). judgment delivered on 22.07.2025)

RULING

Background:

1. The applicant was arraigned before the CM's Court on 7th May 2018 charged with offence of defilement contrary to section 8(1) (3) of the *sexual Offences Act* no. 3 of 2006. The particulars of the offence are that on 4th day of June 2018 at [Particulars withheld] village within Vihiga county intentionally and unlawfully committed an act which caused penetration with his penis to the vagina of RA a child aged 15 years.

2. He denied the offence and this was followed with a full trial where witnesses were summoned by the State and thereafter the trial court ruled as follows:

> According to PW1 and PW5 the accused gave them a lift on a motor bike and later declined to stop so that they would alight. But the rest of the girls managed to jump out but she was not able to jump out. According to PW1 they had seen the accused before. PW3 and PW4 were led to the home of the accused by PW1. From the evidence of PW1 and PW3 and PW4 the complainant knew the accused and was able to identify the accused's house where she led PW3 and PW4. It is also worth noting that the PW1 spent some time with the accused and was therefore able to recognize. From the PW1 evidence itis clear that it is somebody who was known to the complainant. The next ingredient in both charges the prosecution was supposed to prove is age. The prosecution produced the age assessment Reportwhich assessed the age of the complainant as 17 years old by the time the Report was done. The charge sheet was accordingly amended to show that the time the offence was committed. I find that the prosecution established that the complainant was a minor. In PW1 in her evidence stated that the accused forced her to bed and removed her underpants and inserted his penis into her vagina. The evidence of penetration was collaborated by the evidence of the Clinical officer (PW4) who examined the complainant. He found that there were bruises with visible genital discharge. He also found out that the hymen had been raptured and there was laceration to the vaginal wall. He concluded that there was penetration. From the foregoing I find that the prosecution proved beyond reasonable doubt that the accused defiled the complainant and proceed to convict him under section 215 CPC on the main charge. However, the accused is discharged on the alternative charge under section 215 CPC. Ordered accordingly.

3. Thereafter the applicant was sentenced to 20 years imprisonment. He was aggrieved with sentence and preferred to an appeal into the high court and the session Judge Kamau J ruled as follows on the appeal in the Judgment dated 17th July 2025:

    a. For the foregoing reasons, the upshot of this court's decision was that the Appellant's Petition of Appeal dated 15th January 2024 and filed on 19th February 2024 and his Supplementary Grounds of Appeal dated 26th November 2024 and filed on 28th November 2024 was not merited and the same be and is hereby dismissed. His conviction be and is hereby upheld as it was safe. However, his sentence of twenty (20) years be and is hereby set aside and/or vacated and replaced with a sentence of fifteen (15) years imprisonment.

    b. However, for the avoidance of doubt, it is hereby ordered and directed that the period that he spent in custody between 6th June 2018 and 26th November 2019 be taken into account when

computing his sentence in accordance with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya). It is so ordered.

4. He is still aggrieved with the sentence even after losing in both forums constitutionally constituted.

5. This multiplicity of applications on the same subject matter and cause of action runs foul against the doctrine of jurisdiction and res judicata. The predominant question is, does this court have the jurisdiction to exercise oversight over the issue of sentence?

Decision

6. First and foremost, lets us bring forth the doctrine of res judicata borrowed more heavily from section 7 of the CPA. The plea of res judicata is both a mixed question of fact and law. It is trite that res judicata is applicable to both necessary and proper parties including co-defendants where the matter has already been decided between those parties may it be civil or criminal law. The contentious issue here is on sentence as between the State and the applicant who is already serving sentence for the offence in which he challenged his conviction and sentence to the first appeals court. This main issue is what the applicant invites this court to address in the form of resentencing. Therefore, it is a cause of action in the previous proceedings.

7. This is a doctrine which is applicable not only in Kenya but across multiple legal systems, where it is invoked to protect, secure, and preserve the purity of justice, and thereby sustain the proper administration of justice. In the first instance, one may turn to comparative jurisprudence to bring the doctrine home and to demonstrate its global applicability on the finality of judicial decisions rendered by various courts, squarely aimed at delivering justice to the parties and, essentially, averting an abuse of the court process. In this respect, the Supreme Court of India, in the case of Satyadhyan Ghosal v. Deorajin Debi [1960] 3 SCR 590, succinctly noted that the principle of res judicata is essential in giving finality to judicial decisions, observing as under:

> " The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter — whether on a question of fact or a question of law — has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct. The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. ..."

8. In addition, the same supreme court in the case of Hope Planttaions Ltd v Taluk Land Board (1999) 5 SCC 590 has elucidated the applicability of the principles of res judicata and estoppel though for this case the judges were speaking in the Indian Context but our civil procedure heritage and promulgation draws from the fountain of Indian jurisprudence. In fact our section 7 of the CPA as drafted and written by the legislature embodies the same principles in Section 11 of Indian code of the civil

procedure. That is why these principles from the Indian supreme court can apply mutatis mutandis to our circumstances. This what the court said in the above authorities on res juridicata:

> " 26. It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are 'cause of action estoppel' and 'issue estoppel'. These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice. .....
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> Law on res judicata and estoppel is well understood in India and there are ample authoritative pronouncements by various courts on these subjects. As noted above, the plea of res judicata, though technical, is based on public policy in order to put an end to litigation. It is, however, different if an issue which had been decided in an earlier litigation again arises for determination between the same parties in a suit based on a fresh cause of action or where there is continuous cause of action. The parties then may not be bound by the determination made earlier if in the meanwhile, law has changed or has been interpreted differently by a higher forum. But that situation does not exist here. Principles of constructive res judicata apply with full force. It is the subsequent stage of the same proceedings. If we refer to Order XLVII of the Code (Explanation to Rule 1) review is not permissible on the ground 'that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment'."

9. In order to appreciate this doctrine of res judicata and its applicability in Kenya in so far as the interpretation of Section 7 of the CPA the following cases shades lights in the transformative jurisprudence in the matter:Dina Management Ltd v County Government of Mombasa & 5 Others [2021] eKLR (SC Petition 8 of 2021): This case involved the appellant attempting to re-litigate ownership rights over a property already determined in previous, different suits. The Court emphasized the importance of ensuring that the same issues are not repeatedly litigated.Samson Machi v. George Njoroge [2015] Supreme Court ruling: While discussing the principles of estoppel by record,

the court acknowledged the application of res judicata where issues in a new suit have been settled by a previous judgment in rem, such as in the case regarding FERI and COD certifications.Relevant Contextual Principles (2025): Recent high-level filings, such as George Gilbert & Mombo Advocates v Saimanga and Okiya Omtatah Vs Portside Freight Terminals LTD & 13 others, demonstrate that res judicata is often argued in cases involving the setting aside of execution orders based on prior litigation.

10. The key principles which are explicitly developed in the various case law include the fowling:Same parties/issue: for res judicata to apply, the matter must have been directly and substantially in issue in a former suit between the same parties.Exceptions: res judicata may not apply if it can be demonstrated that the prior decision was obtained through fraud or if new, significant evidence is discovered, as seen in cases like AMN v PMN (2016) eKLR

11. The essence of the doctrine of res judicata prevents parties whether in the arena of criminal law, civil, commercial, family etc. from re-litigating cases or issues that have been already decided by a competent court. It serves to end litigation, protect individual sin, double jeopardy in adjudication of dispute be the civil or criminal and ensure finality. How does this rule apply to this case? The High court on 17th July 2025 ruled with finality on the issue of conviction and sentence. That decision is binding on this court with concurrent jurisdiction and no longer subject to be reviewed by this court or any other substantive issue dealing with conviction and sentence. In my considered view therefore the doctrine of estoppel in our legal system landscape prevents the applicant in the criminal law system of administration from going back on a representation, promise or shared assumption where another applicant/convict serving sentence or appellant has reasonably relied on the rubric of re-sentencing which was birthed by the Muruatetu decision to his or her detriment. There is both in law or jurisprudence that criminal cases which have been concluded with finality unless on appeal a court like the one I am presiding over can exercise jurisdiction of any kind to overturn a judgment may it be a single word, decree, full stop etc. likely to overturn a previous decision. That is why the doctrine of res judicata and estoppel is applicable to criminal cases to promote fairness, finality and consistency in the fair administration of justices.

12. For those reasons the application is founded on All Other Ground which is Sinking Sand and not the Solid Rock of the law. The applicant therefore walks naked from this court without a remedy.

DATED, SIGNED AND DELIVERED AT VIHIGA THIS 11TH DAY OF MAY 2026

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R. NYAKUNDI

JUDGE