

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**MISC CRIMINAL APPLICATION NO E026 OF 2023**

**CHARLES**

**MANDA.....APPLICANT**

**VERSUS**

**REPUBLIC.....**

**.....RESPONDENT**

**Coram: Before Justice R. Nyakundi**

**M/s Sidi for the State**

**RULING**

1. What is pending before this court for determination is an application where the applicant is seeking the following orders;
  - a. That the applicant is seeking for sentence review in accordance to article 50(2)(p)(q) of the constitution of Kenya 2010.
  - b. That the applicant is seeking to be considered for a lesser sentence.
  - c. That the applicant is seeking for consideration of time spent in custody included as part of his sentence in accordance to section 333(2) of the CPC.
2. The Application is supported by the annexed affidavit sworn by the Applicant who avers as follows;
  - a) *That I am a Kenyan citizen adult male of sound of mind hence competent to swear this affidavit.*
  - b) *That I was arrested in the year 2019 and charged with the offence of possession of narcotic drugs c/sec 3(1) as read with 3(1) (a) of the narcotic and psychotropic substance (control) act no. 4 of 1994 in criminal case no. 536 of 2019 at Iten law court.*

- c) *That I appealed against the decision of the trial court vide high court revision no. E287/21 at Eldoret high court and the appeal was dismissed by Hon. Justice Nyakundi on 07/02/2023.*
- d) *That I wish to still to approach the same honorable court with a view to seek fresh sentence review.*
- e) *That I am remorseful, repentant, reformed and rehabilitated as I have learned hard lessons while in prison for the custodial terms, now I beg for leniency.*
- f) *That I do beg to be accorded to benefit with the provision of article 50(2) (q) of the constitution of Kenya 2010.*
- g) *That it is my humble prayer that I be granted a fair opportunity to argue my application.*

### **Decision**

3. This court on 10<sup>th</sup> of February 2023 determined this same application. Therefore, any such application is res judicata. As to what constitutes res judicata the court in **Lotta v Tamaki [2003] 2 EA 556 (CAT)** stated that;

*“The doctrine of res judicata is provided in section 7 of the CPA and its object is to bar multiplicity of suits and guarantee finality to litigation. It makes conclusive a final judgment between the same parties or their privies on the same issue by a court of competent jurisdiction in the subject matter of the suit. The scheme of section 9 therefore contemplates five conditions which, when co-existent, will bar a subsequent suit. The conditions are: (i) the matter directly and substantially in issue in the subsequent suit must have been directly and substantially in issue in the former suit; (ii) the former (iii) suit must have been between the same parties or privies claiming under them; the parties must have litigated under the same title in the former suit; (iv) subsequent the court which decided the former suit must have been*

*competent to try the suit; and (v) the matter in issue must have been heard and finally decided in the former suit."*

4. The doctrine of res judicata is based on three maxims: first, that no man should be vexed twice over the same cause; secondly, that it is in the interest of the state that there should be an end to litigation; and thirdly, that a judicial decision must be accepted as correct. The instant case is dismissed for want of jurisdiction.

**DATED, SIGNED AND DELIVERED AT ELDORET VIA CTS THIS 13<sup>TH</sup>  
AUGUST 2025**

.....  
**R. NYAKUNDI  
JUDGE**