

17e1REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
MISC CRIMINAL APPLICATION NO 11 OF 2020

KELVIN JUMA OKWANYO

.....**APPLICANT**

VERSUS

REPUBLIC.....

.....**RESPONDENT**

Coram: Justice R. Nyakundi

M/s Sidi for the State

RULING

1. What is pending before this court for determination is an undated Notice of Motion Application where the Applicant is seeking the following orders:
 - a. That may this Honourable Court be pleased to allow the application
 - b. That the applicant is a prisoner and a pauper

2. The Application is made on the following grounds among others;
 - a. That the Applicant pleaded not guilty to the alleged 2 counts of offences.
 - b. That the Applicant has served 3 years in custody since his arrest on 31/8/016 and sentenced to death on 10/11/017 which was commuted to 15 years by J.A Mrima at High Court Eldoret.
 - c. That due to custodial circumstances and conditions that the Applicant undergoes, he requests the Honourable Court to have leniency and commit him to probation terms.

- d. That the Applicant was arrested while at school and he is still pursuing his education at prison but the conditions are not favourable.
3. The Application is supported by the annexed affidavit sworn by the Appellant who avers as follows;
- a) *That I am an adult Kenyan man with sound mind hence competent to swear and make this oath.*
 - b) *That I was initially charged with offence of two counts of robbery with violence c/section 296(2) of the penal code and gang rape c/section 3 of the sexual offences act no. 3 of 2006. I was sentenced to suffer death penalty by the lower court judge after which I appealed to the high court Eldoret and it was commuted to 15 years' imprisonment by hon. Anthony Mrima (J) dated January, 2019.*
 - c) *That I am the first offender and remorseful.*
 - d) *That I am rehabilitated by having gone various courses in the prison custody i.e. theological studies.*
 - e) *That I have served 3 years in custody since my arrest on 31/8/2016.*
 - f) *That I was arrested when I was still schooling, thus I pray the honorable court to have leniency and reduce the sentence to enable me proceed with my education*
 - g) *That more grounds will be adduced during the hearing of this application*

Decision

4. This claim framed as a relief sought by the applicant is not justiciable before this court. No further life can be breathed into it for the doctrine of res judicata decisively disposes of the matter. See **Mukisa Biscuit Manufacturing Ltd v West End Distributors Ltd, Civil appeal no. 9**

of 1969 (Sir Charles Newbold, P, Duffus, VP, & Law JA on 31st July 1969) (EACA) [1969] EA 696.

5. This application offends the doctrine of res judicata whose legal foundation is in in the realm of civil law but applies in the administration of justice mutatis mutandis to the criminal law branch. The doctrine of res judicata also known as claim preclusion applies in criminal cases to prevent the re litigation of a previously decided matter. Essentially, once a criminal case has been fully and fairly adjudicated, the same parties cannot bring the same charges or claims against each other again. This principle ensures finality in legal proceedings and prevents harassment through repeated litigation.
6. As a result, the application is res judicata. It is so ordered.

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 13TH
AUGUST 2025**

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