



**Wanjiru v Republic (Miscellaneous Criminal Application
E070 of 2024) [2025] KEHC 5912 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5912 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CRIMINAL APPLICATION E070 OF 2024**

FN MUCHEMI, J

MAY 8, 2025

BETWEEN

BONIFACE NJOROGE WANJIRU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Brief Facts

1. The application for determination dated 30th July 2024 seeks to have the sentence of the applicant reviewed.
2. The applicant was convicted by Thika Chief Magistrate, in Criminal Case No. 8469 of 2003 with the offence of robbery with violence contrary to Section 296(2) of the *Penal Code* and was sentenced to death. The applicant appealed to the High Court in Nairobi being Criminal Appeal No. 037 of 2006 and the appeal was dismissed on 19th February 2008. The applicant then appealed to the Court of Appeal in Nairobi being Criminal Appeal No. 006 of 2008 and the same was dismissed on 6th June 2014.
3. The applicant states that he is currently serving a life sentence after the death sentence was commuted to life imprisonment by his Excellency President Hon. Mwai Kibaki. The applicant urges the court to review the decision of the trial court in Thika Criminal Case No. 8469 of 2003 and set aside the sentence of death imposed by the court to protect and promote his right to equal protection and benefit of the law as recommended by Article 27(1)(2) and Articles 54 and 57 of the *Constitution* considering time already served from the date of arrest on 24th September 2003. The applicant further urges the court to consider that he is 45 years old, is remorseful and he is a disabled person. As such, he urges this court to grant him a lenient sentence.



4. The respondent opposes the application as the issue of sentencing has been dealt with by the High Court and Court of Appeal. Therefore the application is incompetent.

The Law

5. This court is empowered by Article 165(6) of the Constitution of Kenya to review a decision by a subordinate court. Article 165(6) provides:-

The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

6. The applicant has come to this Honourable court by way of review provided for under Article 50 of the Constitution. It provides:-

(2) Every accused person has the right to a fair trial, which includes the right: -

(q) If convicted, to appeal to, or apply for review by a higher court as prescribed by law.

7. In the case of Samuel Kamau Macharia v KCB & 2 Others, Civil Application No. 2 of 2011, it was stated:-

“A court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”

8. The applicant herein was convicted by Thika Chief Magistrate, in Criminal Case No. 8469 of 2003 with the offence of robbery with violence contrary to Section 296(2) of the Penal Code and was sentenced to death. He appealed to the High Court Nairobi Criminal Appeal No. 37 of 2006 whereas the appeal was dismissed on 19th February 2008 thereby upholding the conviction and sentence. The applicant then appealed to the Court of Appeal in Nairobi being Criminal Appeal No. 6 of 2008 and the said second appeal was dismissed on 6th June 2014.

9. What then does the law provide in regard to review of sentences or orders in a criminal case? Article 50(2)(q) of the Constitution is of relevance as discussed above. It provides that review of any sentence or order be filed in a higher court other than the court that sentenced the applicant.

10. The applicant after the conviction had two options under Article 50 (2) (q), either to appeal or to apply for review of sentence. He chose to take the option of appealing. The applicant filed the first appeal in the High Court and the 2nd one in the Court of Appeal both of which were dismissed for lack of merit. Having chosen to appeal, the applicant has exhausted his option under Article 50 (2) (q) and has no remedy that this court can grant him in this application. The applicant seems to be trying his luck in this back and forth game.

11. Consequently, I find this application misconceived, incompetent and an abuse of the court process.

12. The application is hereby struck out accordingly.

13. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 8TH DAY OF MAY 2025.

F. MUCHEMI



JUDGE

