



**Njeri v Republic (Criminal Revision E128 of 2024)
[2025] KEHC 8928 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8928 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION E128 OF 2024
FN MUCHEMI, J
JUNE 19, 2025**

BETWEEN

MICHAEL MBUGUA NJERI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The application for determination is dated 7th June 2024 in which the applicant seeks for orders of review of sentence.
2. The applicant was convicted by Gatundu Chief Magistrate in Criminal Case No. 1040 of 2018 of the offence of robbery with violence contrary to Section 296(2) of the *Penal Code* and sentenced to serve fifteen (15) years imprisonment. The applicant appealed to the High Court in Kiambu Criminal Appeal No. 42 of 2020 whereas the appeal was dismissed on 29th November 2023.
3. The applicant states that he was arrested on 26th July 2018 and convicted on 17th July 2020 and that the trial court did not take that period into consideration during sentencing.
4. The respondent filed grounds of opposition and submissions dated 3rd June 2025 and argues that the instant court became functus officio and has no jurisdiction to resentence since a court of concurrent or similar jurisdiction, that is, the Kiambu High Court vide Appeal No. 42 of 2020 upheld the sentence of the trial court. The respondent further argues that asking the current court to resentence is equivalent to asking the court to sit as an appellate court against its own judgment and determine whether the appeal has chances of success.
5. The respondent states that the issue of sentence has been dealt with conclusively to the effect that the appeal on conviction and sentence had no merit in the High Court. The respondent further states that the offence the applicant was found guilty of is a felony which attracts a death sentence and is legal and constitutional considering the circumstances. The respondent further states that the applicant is just



testing the waters and trying his luck thus doing forum shopping which actions should be discouraged to deter other potential applicants with similar applications.

The Law.

6. 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.

7. 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.

8. In the case of *Samuel Kamau Macharia vs 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.”

9. The applicant herein was convicted of the offence of robbery with violence by the trial court in Gatundu CM Criminal Case No. 1040 of 2018 and sentenced to serve 15 years imprisonment. He appealed to the High Court in Kiambu in Criminal Appeal No. 42 of 2020 whereas the appeal was dismissed on 29th November 2023. In upholding the sentence, the High Court took into consideration that the level of the crime did not amount to a heinous crime warranting the death sentence and thus the term of fifteen years was appropriate in the circumstances. This court has no legal basis to interfere with the sentence of a court with concurrent jurisdiction.

10. It is further noted that under Article 50 (2), the applicant having opted to appeal, has exhausted his rights and is not entitled to review before a higher court.

11. Consequently, I find this application misconceived and incompetent and it is hereby struck out.

12. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 19TH DAY OF JUNE 2025.

HON. F. MUCHEMI

JUDGE

