



**Kariuki v Republic (Miscellaneous Criminal Application
E062 of 2025) [2025] KEHC 10850 (KLR) (25 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10850 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL APPLICATION E062 OF 2025
RN NYAKUNDI, J
JULY 25, 2025**

BETWEEN

JOSEPH KIMANI KARIUKI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

M/s Kirenge for the state

1. What is pending before me for determination a Notice of Motion Application dated 22nd April 2025 in which the Applicant is seeking the following order:
 - a. That the court be pleased to order for criminal sentence revision and sentence to run from the day he was remanded.
2. The Application is based on the following grounds:
 - a. That the Applicant herein is seeking for criminal sentence reduction in a case of robbery with violence contrary to section 296(2) of the *Penal Code* in Criminal Case No. 3484 of 2019 at CM's Court Eldoret in which he was convicted to 25 years and upon appeal *vide* HCCR Appeal No E052 of 2023 at Eldoret, the appeal was dismissed.
 - b. That under the provisions of section 333(2) of the *Criminal Procedure Code* and Practice Rules 2016, this Honourable Court has the discretion to reduce the sentence.
 - c. That the Constitution provides that a convicted person is entitled to a less severe sentence if he is a first offender.



- d. That the Applicant has served a substantial number of years in prison since he was convicted and has taken advantage of the rehabilitation programs offered in prison.
3. The Application is supported by the annexed affidavit sworn by the Applicant herein whose averments echo the grounds of the application.

Analysis and Determination

4. On perusal of the application, the main issue for determination herein is whether the applicant is entitled to review of sentence under Section 333(2) of the *Criminal Procedure Code*.
5. Section 333(2) of the *Criminal Procedure Code* provides: -

“Subject to the provisions of Section 38 of the Penal Code, every sentence shall be deemed to commence from and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code. Provided that where the person sentenced under sub section (1) has prior, to such sentence shall take account of the period spent in custody.”

6. However, I wish to take note that the Applicant herein had appealed to the High Court *vide* Criminal Appeal No. E052 of 2023 in which the session Judge held as follows in paragraph 60 and 61 of her decision:

Application of Section 333(2) of the *Criminal Procedure Code*

60. I have perused the trial court’s proceedings on sentencing. In meting out the sentence, amongst that which the Hon Magistrate considered before determining the sentence in his own words is “... the fact that the accused herein has been in remand incarceration for 10 years...” This being the case then obviously the term of 25 years’ imprisonment is inclusive of and did factor in the period of time that the appellant spent in remand custody. In this regard, Section 333(2) of the *CPC* is not applicable.
 61. In light of the conclusions herein reached by this Court on all the Grounds of Appeal raised by the appellant, it is my finding that the appellant’s Appeal on both the conviction and sentence is devoid of merit. The said Appeal is therefore now hereby dismissed in its entirety and both the conviction and sentence upheld.
7. It is thus crystal clear that the issue of sentencing specifically the applicability of section 333(2) of the *Criminal Procedure Code* was readily dealt with by this Honourable Court in Criminal Appeal No E052 of 2023. It is trite law that this court cannot sit on appeal of its own ruling or judgement for it already determined the issue of sentencing in its Judgement delivered on 6th March 2025.
 8. From the above, I agree with the decision in the case of *Wanyonyi v Republic* (Miscellaneous Application E035 of 2021) [2023] (KLR) where the court held that:

By reviewing the said decision, this court would be arrogating itself the appellate jurisdiction to entertain an appeal from its own decision or decision of a court of concurrent jurisdiction. The law abhors that practice of a judge sitting to review a judgment or decision of another judge of concurrent jurisdiction. Good governance demands that cases be handled procedurally in the right forum. This is because the rule of the thumb is that superior courts cannot sit in review/appeal over decisions of their peers of equal and competent jurisdiction much less those courts higher than themselves.



9. Consequently, the Application herein is devoid of merit and the same is dismissed.

10. It is so ordered.

DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 25TH JULY 2025

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R. NYAKUNDI

JUDGE

