



REPUBLIC OF KENYA



KENYA LAW
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**Kamarinyang v Republic (Criminal Revision E310 of 2024)
[2025] KEHC 12540 (KLR) (9 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12540 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E310 OF 2024
RN NYAKUNDI, J
SEPTEMBER 9, 2025**

BETWEEN

KAROTICH KAMARINYANG APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation

M/s Sidi for the State

1. The Applicant approached this Court by way of a notice motion and supporting affidavit which states as follows:
 1. That I was charged with an offence of Robbery with Violence contrary to Section with 296(2) of the Penal Code where I was sentenced to 90 years imprisonment.
 2. That my first appeal to the High Court vide HCCRA No. 193 of 2019 at Eldoret was allowed and my sentence reduced to 15 years imprisonment.
 3. That I did not appeal to the Court of Appeal and have no intention to make an appeal.
 4. That the period spent in remand from 30/01/2017 to 19/11/2019 amounts to a total of 2 years, 10 months.
 5. That the honorable court be pleased to invoke the provision of Section 333(2) of the Criminal Procedure Code i.e, the time spent in remand be factored in the sentence to be awarded.
 6. That the High Court has competent jurisdiction to hear and determine this application under Article 163(b) of *the Constitution* of Kenya 2010.



7. That under the provisions of *the Constitution* 2010 and practice and Procedure Rules 2010 the Court has powers to hear and determine infringements of fundamental rights and award remedies.
8. That I am a pauper thus I pray for a waiver of the cost of preparation of this application.

Decision

2. This case has a long history of litigation from the Magistrate's court to the High Court which delivered its decision on 28th May 2020 at Eldoret. This is what the court said with finality:

“However, 90 years is eternal, and may as well be termed a life sentence. In my view the 15 years sentence on each count was appropriate, and I therefore set aside the consecutive term which is revised to run concurrently from the date of conviction. It is only at that extent that the appeal succeeds.”

3. This application before court can only be entertained under Article 50 (6) (a) & (b) of *the Constitution* which reads as follows:

“A person who is convicted of a criminal offence may petition the High Court for a new trial if-

- a. The person's appeal, if any, has been dismissed by the highest court to which the person is entitled to appeal, or the person did not appeal within time allowed for appeal; and
- b. New and compelling evidence has become available.

4. The guiding principles on these provisions of *the constitution* are to be found in the following case law: Lawrence Nditu & 600 Others vs Kenya Breweries Limited and Another Petition 2013 No. 3 of 2012 KLR. It was held:

“This article must be seen to be laying down the principle that not all intended appeals lie from the Court of Appeal to the Supreme Court, only those appeals arising from cases involving the interpretation or application of *the constitution* can be entertained by the Supreme Court Towards this end, it is not the mere allegation in leadings by a party that clothes an appeal with the attributes of the constitutional interpretation or application ... the appeal must originate from a Court of Appeal case where issues of contestation revolved around the interpretation or application of *the constitution*. In other words, an appellant must be challenging the interpretation or application of *the constitution* which the court of appeal used to dispose of the matter in that forum. Such a party must be faulting the court of appeal on the basis of such interpretation. Where the case to be appealed from had nothing or little to do with the interpretation or application of *the constitution*, it cannot support a further appeal to the Supreme Court under the provisions of Article 163(4) (a).

5. Similarly, in Tom Martin Kibisu vs. Republic Supreme Court Petition No. 3 of 2014 it was held:

“Article 50 is an extensive constitutional provision that guarantees the right to a fair hearing and, as part of the right, it offers to persons convicted of certain criminal offences another opportunity to petition the High Court for a fresh trial. Such a trial entails a re-constitution of the High Court forum, to admit the charges, and conduct a re-hearing, based on the new



evidence. The window of opportunity for such a new trial is subject to two conditions. First, a person must have exhausted the course of appeal, to the highest Court with jurisdiction to try the matter. Secondly, there must be ‘new and compelling evidence.’”

We are in agreement with the Court of Appeal that under Article 50(6), “new evidence” means “evidence which was not available at the time and which despite exercise of due diligence, could not have been availed at the trial”, and “compelling evidence” implies “evidence that would have been admissible at the trial, of high probative value and capable of belief, and which, if adduced at the trial would probably have led to a different verdict.” A court considering whether evidence is new and compelling for a given case, must ascertain that it is, prima facie, material to, or capable of affecting or varying the subject charges. The criminal trial process, the conviction entered, or the sentence passed against an accused person.”

6. The affidavit in support of the application contains no new compelling evidence for this court to exercise its jurisdiction to order for a new trial on the issue of sentence. In the same context, the doctrine of res judicata applies to this matter which means the court is prevented from having the same issue being litigated in court after final judgment has been rendered both at the trial court and at the High Court. While this doctrine is mostly common associated with Civil Cases this principle is not ruled out by law that it cannot apply to criminal proceedings to bar a re-prosecution of an accused person or on the other hand that convicted accused person be permitted to file multiple applications in the name and style of resentencing, revision or review. There must be finality in legal judgments and the court to prevent endless litigation to avoid parties filing frivolous applications just to vex the court. For those reasons this application is dismissed under Section 382 of the Criminal Procedure Code.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 9TH DAY OF SEPTEMBER 2025.

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R. NYAKUNDI

JUDGE

