



**Thiga v Republic (Criminal Revision E003 of 2023)
[2025] KEHC 12691 (KLR) (9 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12691 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION E003 OF 2023
FN MUCHEMI, J
SEPTEMBER 9, 2025**

BETWEEN

STEPHEN THIGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Brief Facts

1. This undated application was filed on 17th November 2022 whereas the applicant seeks for orders of review of sentence under Section 333(2) of the [Criminal Procedure Code](#).
2. The applicant was convicted by Thika Chief Magistrate in Criminal Case No. 2604 of 2005 of the offence of robbery with violence contrary to Section 296(2) of the [Penal Code](#) and was sentenced to death. The applicant thereafter applied for resentencing in Thika Chief Magistrate Miscellaneous Criminal Application No. 118 of 2019 whereby the court set aside the death sentence and substituted it with twenty (20) years imprisonment.
3. The applicant herein seeks for review on sentencing and asks the court to invoke section 333(2) of the [Criminal Procedure Code](#) and consider the period he served in remand custody pending the hearing and disposal of his case. The applicant states that he was arrested on 25th May 2005 and the trial magistrate failed to consider the time he spent in remand.
4. In opposition to the application, the respondent filed a Replying Affidavit dated 20th February 2024 and states that this court became *functus officio* and cannot sit on an appeal of a decision made by a court of similar jurisdiction or a court of higher jurisdiction.
5. Parties put in written submissions.



The Applicant's Submissions.

6. The applicant submits that he was charged in Thika Criminal Case No. 2604 of 2005 with the offence of robbery with violence and sentenced to death. Being aggrieved by the said decision, he appealed to the High Court in Nairobi vide Criminal Appeal No. 182 of 2006 and the same was dismissed. The applicant submits that he lodged a second appeal at the Court of Appeal in Nairobi being Criminal Appeal No. 32 of 2008 and the same was dismissed on 13th August 2013. He thereafter filed an application for resentencing in Thika Chief Magistrate Court in Miscellaneous Criminal Application No. 118 of 2019 whereby the court reduced his sentence to twenty years. The applicant submits that the court in resentencing failed to consider his age, health status, that he is remorseful and has rehabilitated through various programmes while in prison. Further, the applicant states that he was arrested on 15th May 2005 and sentenced on 27th April 2006 thus spending one year in remand. The applicant submits that he cumulatively spent 14 years in prison from when his sentence was reviewed on 13th November 2019. Thus, he urges the court to consider the period he spent in remand. To support his contentions, the applicant refers to the decisions in *David Gatembu Mbeti v Republic* Misc. Criminal Appl. No. 68 of 2019 and *Ahamad Abolfathi Mohammed & Another v Republic* (2018) eKLR.

The Respondent's Submissions.

7. The respondent reiterates what she deposed in her affidavit and submits that the applicant is abusing the court process.

The Law

8. 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.

9. The applicant has come to this Honourable court by way of review provided for under Article 50 (2) (q) 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.

10. 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.”

11. The applicant herein was convicted of the offence of robbery with violence by the trial court in Thika CM Criminal Case No. 2604 of 2005 and sentenced to death. He appealed to the High Court in Nairobi in Criminal Appeal No. 182 of 2006 which appeal was dismissed on 4th March 2008. The applicant then filed a second appeal in the Court of Appeal Nairobi being Criminal Appeal No. 32 of 2008 which was dismissed on 14th June 2013 thus upholding the conviction and sentence.



12. Article 50(2)(q) of the *Constitution* is of relevance herein. The applicant after conviction had two options: to appeal or to apply for review in a higher court. He chose to appeal and exhausted the two levels including the Court of Appeal. The applicant must be reminded of the cardinal principle
13. that litigation must come to an end. The legal provisions which limit the number of times one can go to court to litigate on the same matter were enacted for a reason, mainly to cure the mischief of some litigants who would otherwise file suit after suit and application after application and end up wasting precious judicial time.
14. It is important to state that the applicant having lodged an appeal at the Court of Appeal which is a higher court to this one, cannot apply a reverse gear to return to the High Court for non-existent remedies. This is in actual fact, absurd.
15. Accordingly, the application filed on 17th November 2022 is misconceived and incompetent and it is hereby struck out.
16. It is hereby so ordered.

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

F. MUCHEMI

JUDGE

