



**Ndirangu v Republic (Miscellaneous Criminal Application
E038 of 2025) [2025] KEHC 15462 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15462 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CRIMINAL APPLICATION E038 OF 2025
FN MUCHEMI, J
OCTOBER 30, 2025**

BETWEEN

SAMUEL GITAU NDIRANGU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Brief Facts

1. The application for determination is undated whereas the applicant seeks to have his sentence reviewed under Section 35 of the Penal Code.
2. The applicant was convicted by Gatundu Senior Principal Magistrate, in Criminal Case No. E1297 of 2021 with the offence of stealing stock contrary to Section 278 of the Penal Code and was sentenced to serve five (5) years imprisonment. The applicant then sought revision of sentence in the High Court Kiambu Criminal revision No. E340 of 2023 under Section 333(2) of the Criminal Procedure Code in respect of the period served in remand custody. The court ordered the sentence to run from the date of arrest on 30th January 2021 which outcome was successful.
3. The applicant herein seeks for review of sentence and urges the court to grant him a non custodial sentence pursuant to Section 4 of the *Probation of Offenders Act*. The applicant further states that he is a first offender, remorseful and his health is deteriorating thus he would benefit from an early release. Additionally, the applicant states that he has waived his right of appeal in respect of Criminal Case No. E1297 of 2021.

The Law

4. 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.
5. The above provision prohibits review where a convict has gone through the appeal process. In the instant matter the applicant was convicted by Gatundu Senior Principal Magistrate, in Criminal Case No. E1297 of 2021 with two counts of the offence of stealing stock contrary to Section 278 of the Penal Code and injuring an animal contrary to Section 338 of the Penal Code and was sentenced to serve five (5) years imprisonment in Count I and two (2) years imprisonment in Count II. The sentences were to run concurrently.
6. The applicant sought revision of the sentence on to the High Court in Kiambu in Criminal Revision No. E340 of 2023 under Section 333(2) of the Penal Code and the court on the 6th day of December 2024 directed that the period spent in remand be taken into account in the imprisonment term. The applicant having filed an application for review of his sentence has no legal basis of approaching this court for a review under Article 50(2) (q) in the present court.
7. It is therefore, evident that this court has no power to review the judgment of the High Court Kiambu whereas the sentence issue was dealt with. The court directed that the sentence runs from the date of arrest as required by the law.
8. As such I find this application misconceived and incompetent. It is hereby struck out.
9. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 30TH DAY OF OCTOBER 2025.

F. MUCHEMI

JUDGE

