



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Baariu v Republic (Criminal Revision E059 of 2025)
[2025] KEHC 17677 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17677 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION E059 OF 2025
FN MUCHEMI, J
NOVEMBER 27, 2025**

BETWEEN

LAWRENCE KIMANI BAARIU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Brief Facts

1. The application dated 7th May 2025 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. 3158 of 2017 with the offence of robbery with violence contrary to Section 295 as read with Section 296(2) of the Penal Code and was sentenced to serve ten (10) years imprisonment.
3. The applicant herein seeks for review of sentence by invoking section 333(2) of the Criminal Procedure Code whereas the period he spent in custody pending the hearing and disposal of his case be considered. The applicant states that he was arrested on 15th December 2020 and has spent 4 years and 5 months in custody that the trial magistrate failed to consider during sentencing.
4. In opposition to the application, the respondent filed Grounds of Opposition and submissions dated 15th August 2025 and states that the court has become 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. E004 of 2021 upheld the sentence of the trial court and dismissed the appeal on conviction. 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 sentence passed by the trial court was proper and legal as it considered the aggravating and mitigating circumstances.
6. The respondent argues that the offence which the applicant was found guilty is a felony which attracts a death sentence and hence the ten years imprisonment sentence was very lenient. Furthermore, the respondent states that the applicant is just testing waters and trying his luck thus forum shopping which actions should be discouraged to deter other potential applicants with similar applications.
7. The respondent relies on the case of *Chege vs Republic (Criminal Appeal 98 of 2019) (2025) KECA 1207 (KLR)* where the Court of Appeal Nakuru upheld the death sentence and submits that mandatory and minimum sentences imposed in the statutes have not been invalidated.

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 was convicted jointly with two others in Chief Magistrate Court in Thika in Criminal Case No. 3158 of 2017 with the offence of robbery with violence contrary to Section 295 as read with Section 296(2) of the Penal Code. The applicant was sentenced to ten years imprisonment and being aggrieved with the conviction and sentence appealed to the High Court in Kiambu being Criminal Appeal No. E004 of 2021 whereby the appeal was dismissed on 26th September 2024 thereby upholding the conviction and sentence.
10. Article 50 of *the Constitution* prohibits review where a convict has gone through an appeal process. 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.
11. In the instant matter the applicant lodged an appeal in the High Court in Kiambu being Criminal Appeal No. E004 of 2021 which was dismissed. As such, the applicant has no legal basis of approaching this court for review of sentence under Article 50(2) (q).
12. It is therefore, evident that this court has no power to review a judgment rendered by a court of concurrent jurisdiction which upheld the conviction and sentence in the applicant's case.
13. As such I find this application misconceived and incompetent and it is hereby struck out.
14. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 27TH DAY OF NOVEMBER 2025.

F. MUCHEMI

JUDGE

