



**Njoroge v Republic (Miscellaneous Criminal Application E041 of 2025)  
[2025] KEHC 17808 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17808 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
MISCELLANEOUS CRIMINAL APPLICATION E041 OF 2025  
FN MUCHEMI, J  
NOVEMBER 27, 2025**

**BETWEEN**

**PETER KIMANI NJOROGE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The application for determination is dated 26<sup>th</sup> May 2025 in which the applicant seeks to have his sentence reviewed under Section 333(2) of the Criminal Procedure Code.
2. The applicant was convicted by Thika Magistrate in Criminal Sexual Offence Case No. 912 of 2015 with the offence of committing an indecent act with a child contrary to Section 11(1) of the [Sexual Offences Act](#) No. 3 of 2006 and was sentenced to serve ten (10) years imprisonment.
3. The applicant herein seeks for review of sentence urging the court to invoke section 333(2) of the Criminal Procedure Code and consider the period he spent in remand custody pending the hearing and disposal of his case. The applicant states that he was arrested on 16<sup>th</sup> June 2020 and spent 2 years and 8 months in custody which the trial magistrate failed to consider during sentencing.
4. The respondent opposes the application vide Grounds of Opposition dated 11<sup>th</sup> June 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. E003 of 2020 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 avers that the applicant's supporting affidavit is not commissioned hence defective. 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.

### **The Law**

7. 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.
8. In the instant matter the applicant was convicted by Thika Chief Magistrate, in Criminal Sexual Offence Case No. 912 of 2015 with the offence of committing an indecent act with a child contrary to Section 11(1) of the *Sexual Offences Act* No. 3 of 2006 and was sentenced to serve ten (10) years imprisonment. The applicant appealed on to the High Court in Kiambu being Criminal Appeal No. E003 of 2020 and the appeal was dismissed on 26<sup>th</sup> June 2024 thereby upholding the conviction and sentence. The applicant herein therefore has no legal basis of approaching this court for a review under Article 50(2) (q).
9. It is therefore, evident that this court has no power to review the judgment of the High Court Kiambu, which is a court of concurrent jurisdiction and which upheld the conviction and sentence in the applicant's appeal No. E003 of 2020.
10. As such I find this application misconceived and incompetent and hereby strike it out.
11. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 27<sup>TH</sup> DAY OF NOVEMBER 2025.**

**F. MUCHEMI**  
**JUDGE**

