



**Baruw v Republic (Miscellaneous Criminal Application
E050 of 2025) [2026] KEHC 111 (KLR) (15 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 111 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E050 OF 2025**

**JN ONYIEGO, J
JANUARY 15, 2026**

BETWEEN

GEDI BARE BARUW APPLICANT

AND

REPUBLIC RESPONDENT

*(Being a revision application against the sentence of Hon. Justice Mutuku delivered
on 9-5-2013 in Garissa Criminal case No. 61 of 2010 Garissa high Court)*

RULING

1. The appellant herein was charged with the offence of murder contrary to Section 203 as read with Section 204 of the penal code. Particulars are that on the 7th August 2010 at Jarirrot Sub-location in Garissa district, North Eastern province he murdered Abdi Ahmed Dahir.
2. The applicant denied the charge and upon full hearing, the trial court convicted and sentenced him to serve (20) years' imprisonment.
3. He has now moved this court vide a notice of motion dated 21-11-2025 seeking for review of sentence by taking into account the period spent in remand custody. In response, prosecution did not oppose the application but instead left it at the discretion of the court.
4. I have considered the application herein and the response thereof. The law governing revision in a criminal case is captured under Section 362 and 364 of the CPC. Section 362 and 364 provides as follows;

“ 362. Power of High Court to call for records

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself



as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

364. Powers of High Court on revision

- (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may —
 - (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
 - (b) in the case of any other order other than an order of acquittal, alter or reverse the order.
 - (c) in proceedings under section 203 or 296(2) of the Panel Code (Cap. 63), the *Prevention of Terrorism Act* (Cap. 59B), the *Narcotic Drugs and Psychotropic Substances (Control) Act* (Cap. 245), the Prevention of Organized Crimes Act (Cap. 59), the *Proceeds of Crime and Anti-Money Laundering Act* (Cap. 59A), the *Sexual Offences Act* (Cap. 63A) and the *Counter-Trafficking in Persons Act* (Cap. 61), where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.
- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.
- (3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.
- (4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.



(5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.

5. It is clear from the above provisions that an application for review of sentence can be entertained only for purposes of the court satisfying itself as to the correctness, legality or propriety of the proceedings. Section 364(5) of the CPC is emphatic that no application for revision should be entertained where an appeal lies from a sentence or order. This position was espoused in Criminal Revision number 194 of 2023 Kisii High court in the case of Barongo Siany Atembe vs Republic.
6. In the instant application the court is being asked to review sentence under section 333(2) of the CPC which provides that when imposing sentence, a trial court should take into consideration the period spent in remand custody. A perusal of the record clearly show that the trial court did not consider the period spent in remand custody.
7. However, considering that the decision was made by a judge of concurrent jurisdiction, in my view, I cannot attempt to review its decision. I believe the applicant should have placed the application before the trial judge or court of appeal. For that reason, it is my finding that the application is devoid of merit hence dismissed.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 15TH DAY OF JANUARY 2026

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J.N.ONYIEGO

JUDGE

