



REPUBLIC OF KENYA



**Makau v Republic (Criminal Revision E078 of 2025)
[2026] KEHC 3546 (KLR) (12 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3546 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION E078 OF 2025
FN MUCHEMI, J
MARCH 12, 2026**

BETWEEN

PETER MAKAU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The application for determination dated 16th October 2025 and Further Affidavit dated 3rd February 2026 seeks for orders of review of sentence under Section 333(2) of the Criminal Procedure Code.
2. The applicant states that he was convicted by Thika Chief Magistrate, in Criminal Case No. E1286 of 2019 with the offence of abuse of position of authority contrary to Section 24(4) of the [Sexual Offences Act](#) and was sentenced to serve ten (10) years imprisonment.
3. The applicant seeks for review of sentence and urges the court to invoke Section 333(2) of the Criminal Procedure Code and consider the period he served in remand custody pending the disposal of his case. The applicant states that he was arrested on 21st February 2019 and the trial magistrate failed to consider the time he spent in remand during sentencing.

The Law

4. 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.



5. The applicant was convicted in Chief Magistrate's Court in Thika in Criminal Case No. E1286 of 2019 with the offence of abuse of position of authority contrary to Section 24(4) of the *Sexual Offences Act*. The applicant was sentenced to ten (10) years imprisonment. The applicant filed an appeal at the High Court in Kiambu being Criminal Appeal No. E056 of 2021 and sought to have additional evidence be taken under Section 358 of the Criminal Procedure Code. The High Court at Kiambu allowed the application and directed that the file be taken back to the lower court for purposes of taking further evidence. The matter came up for mention severally but the hearing never took off and the learned magistrate closed the file and directed that as there was a pending appeal, the applicant to follow up with the High Court.
6. 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.
7. In the instant matter the applicant filed an appeal at High Court Kiambu Criminal Appeal No. E056 of 2019 and as it stands the appeal has not been withdrawn. With a live appeal, the applicant ought to pursue the said appeal to conclusion. Article 50 of *the Constitution* gives the applicant only one option, that is, either to appeal or to apply for a review in a higher court.
8. For that reason, I find this application not properly before the court and it is hereby struck out.
9. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 12TH DAY OF MARCH 2026.

**F. MUCHEMI
JUDGE**

