



REPUBLIC OF KENYA



KENYA LAW
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**Hinzano v Republic (Criminal Revision E051 of 2024)
[2025] KEHC 92 (KLR) (17 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 92 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL REVISION E051 OF 2024**

M THANDE, J

JANUARY 17, 2025

BETWEEN

KENGA CHARO HINZANO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein was charged in Malindi High Court Criminal Case No. 31 of 2010 with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. He was convicted and sentenced to death which was later commuted to a life sentence. The Applicant filed Petition No. 23 of 2019 in which Nyakundi, J. reduced his sentence to 25 years imprisonment.
2. The Applicant has now moved to this Court by the present Application seeking that the Court considers the period of 1 year and 4 months spent in remand and reduce his sentence accordingly, pursuant to Section 333(2) of the *Criminal Procedure Code*.
3. The Respondent opted not to file a response and left the decision to the Court.
4. It is necessary for this Court to determine at the outset whether it has jurisdiction to entertain the Application before it.
5. It is trite that Court may only exercise that jurisdiction which has been conferred upon it by the *Constitution*, statute or both. In the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR the Supreme Court succinctly stated:

A Court's jurisdiction flows from either the *Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the *Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue



as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.

6. This Court derives its jurisdiction principally from Article 165(3) of the *Constitution* which confers upon this Court unlimited original jurisdiction in criminal and civil matters, the provision clearly delineates and demarcates what the Court can and cannot do. The jurisdiction of this Court includes supervisory powers. By dint of Article 165(6) however, this Court cannot supervise superior courts. It 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. (emphasis)

7. The Applicant's has already approached this Court, which is a superior court, by way of petition which was heard and determined. What he now seeks is that this Court reopens the matter and reviews its own decision, a jurisdiction it does not have. In this regard, I associate with the holding in *John Kagunda Kariuki v Republic* [2019] eKLR, where Ngugi, J, (as he then was) stated:

10. In the present case, the Applicant's appeal has already been heard by the High Court. He cannot return to the High Court for a review of the sentence imposed. He is at liberty to make an argument for reduced sentence at the Court of Appeal.

8. I am also guided by the holding in *Bellevue Development Company Ltd v Francis Gikonyo & 7 others* [2018] eKLR, where Kiage, JA considered whether a judge can review the finding of a judge of concurrent jurisdiction and stated:

I have no difficulty upholding the learned Judge's holding that as a judge of the High Court he had no jurisdiction to enquire into or review the propriety of the decisions of the Judges, who were of concurrent jurisdiction as himself. In our system of courts, which is hierarchical in nature, judges of concurrent jurisdiction do not possess supervisory jurisdiction over each other. No judge of the High Court can superintend over fellow judges of that court or of the superior courts of equal status. That much is plain common sense. It has, moreover, been expressly stated in Article 165(6) of the *Constitution* in these terms;

“The High Court has supervisory jurisdiction over the subordinate courts and over any other person, body or authority exercising a judicial or quasi judicial function, but not over a superior court.” (Our emphasis)

The learned Judge reasoned, correctly in my view, that an enquiry into the complaints in the appellant's petition against the Judges called upon him to determine the lawfulness or good faith basis of both their decisions and their conduct, and he could not purport to arrogate to himself the power to review their decisions over which he had no authority. Such an undertaking would have been a plain nullity as had been stated by this Court in *Peter Ng'ang'a Muiruri v. Credit Bank Ltd & 2 Others* Civil Appeal No. 203 of 2006 which the learned Judge cited. The Court in dispelling the notion that a judge of concurrent jurisdiction could supervise fellow judges had stated as follows;

“It would be a usurpation of power to push forward such an approach, and whatever decision emanates from a court regarding itself as a constitutional court,



with powers of review over decisions of concurrent or superior jurisdiction, such decision is at best a nullity.”

This position is so well established that it would be a strange aberration for a judge to embark on what is essentially an examination of the judicial conduct and pronouncements of judges of the same status as himself, a task that is left to courts and judges of higher status in the hierarchy, by way of appeals.

9. Flowing from the foregoing, it is clear that this Court cannot supervise a superior court whether of concurrent or higher jurisdiction. Further, having had his petition heard and determined by this Court, the Applicant cannot again approach this Court over the same issue. The present Application is an abuse of the court process.
10. In light of the foregoing, I decline the invitation by the Applicant to scrutinize and interrogate the decision of a judge of concurrent jurisdiction. This issue of the period spent in custody prior to sentencing ought to have been raised in his petition.
11. The Application being an abuse of the court process is hereby dismissed.

DATED, SIGNED AND DELIVERED IN MALINDI THIS 17TH DAY OF JANUARY 2025

M. THANDE

JUDGE

