



REPUBLIC OF KENYA



KENYA LAW
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**Ngati v Republic (Criminal Revision E009 of 2024)
[2025] KEHC 107 (KLR) (17 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 107 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL REVISION E009 OF 2024
M THANDE, J
JANUARY 17, 2025**

BETWEEN

KITSAO CHARO NGATI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged in Malindi Criminal Case No. 122 of 2011 with the offences of robbery with violence contrary to Section 296(2) of the *Pena Code* and contrary to Section 3(1)(a) of the *Sexual Offences Act*. He was convicted of both offences and sentenced to death for robbery with violence and 20 years for rape, which latter sentence was held in abeyance in view of the former sentence.
2. The Applicant appealed to this Court vide Criminal Appeal No. 136 of 2011. In its judgment, the Court stated that in light of the Supreme Court decision in *Francis Karioko Muruatetu & another v Republic* [2017] eKLR, it ought to take into account the Applicant's mitigation and impose an appropriate sentence. The Court then proceeded to set aside the death sentence and imposed upon the Applicant, a sentence of 30 years from the date of his arrest.
3. The Applicant has now moved to this Court by an Application filed on 25.1.24, seeking review of his sentence in consideration of his mitigation and that the period spent in custody pending trial be considered.
4. The Respondent opposed the Application vide grounds of opposition dated 22.10.24. The grounds are that the Applicant has not exhausted all grounds of appeal; that the sentence imposed upon the Applicant was determined by the trial court as a matter of fact and that this Court does not have jurisdiction to review the same through the Application; that litigation must come to an end; that the Application ought to be dismissed as it is bad in law, an abuse of the court process and devoid of merit.



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.

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 as provided for under Article 165(6) as follows:

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.

7. Following his conviction, the applicant appealed to this Court which heard and determined the same. What he now seeks is that this Court 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. The matter of the Applicant's sentence was determined by this Court, albeit differently constituted. The Applicant has invited this Court to rehear the same. This Court lacks jurisdiction to supervise a superior court and cannot therefore entertain the matter, leave alone grant orders herein to reopen or review the decision of its peer of equal and competent jurisdiction.

9. In light of the foregoing, the Court finds that the Application herein is incompetent and the same is hereby struck out.

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

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M. THANDE

JUDGE

