



REPUBLIC OF KENYA



**Iha v Republic (Miscellaneous Criminal Application E008 of 2024)
[2025] KEHC 3511 (KLR) (21 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3511 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
MISCELLANEOUS CRIMINAL APPLICATION E008 OF 2024**

**M THANDE, J
MARCH 21, 2025**

BETWEEN

SAFARI KWICHA IHA PETITIONER

AND

REPUBLIC RESPONDENT

JUDGMENT

1. Before me for consideration is an Application filed on 25.1.24. The Applicant was convicted of the offence of defilement in Kilifi Criminal Case No. 662 of 2012 and sentenced to 30 years imprisonment. He appealed in Malindi High Court Criminal Appeal No. 3 of 2013, which appeal was dismissed and the conviction and sentence affirmed.
2. The Applicant has now returned to this Court seeking review of the sentence imposed upon him on ground that all sexual offenders who are convicted and sentenced under mandatory minimum penal laws deserve to have their mitigation taken into account.
3. The Respondent opted not to file any response.
4. The Applicant has stated in his Application that he appealed to this Court and his appeal was dismissed. In light of this, the question of jurisdiction arises.
5. The law, is that this Court may only exercise that jurisdiction which has been conferred upon it by the Constitution, statute or both. A court cannot arrogate to itself jurisdiction that has not been conferred upon it by law nor exercise jurisdiction exceeding that which is conferred upon it by law. 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. Article 165 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 a superior court. 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 superior courts in the court system in Kenya are listed in Article 162 (1) of the *Constitution*, which provides:

The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts mentioned in clause (2).

8. After his unsuccessful appeal to this Court, the Applicant now seeks that the Court reviews its own decision. By dint of Article 165(6) therefore, this Court lacks the jurisdiction to reopen the matter to relook at his sentence that was upheld by this Court. The Applicant's remedy lies in an appeal to the Court of Appeal. In this regard, I associate with the holding in *John Kagunda Kariuki v Republic* [2019] eKLR, where Ngugi, J, (as he then was) stated:

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.

9. In light of the foregoing, I find that the Application filed on 25.1.24 is incompetent for want of jurisdiction, and the same is hereby struck out.

DATED, SIGNED AND DELIVERED IN MALINDI THIS 21ST DAY OF MARCH 2025

M. THANDE

JUDGE

