



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mureithi v Republic (Petition E006 of 2021)  
[2025] KEHC 3519 (KLR) (14 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3519 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
PETITION E006 OF 2021**

**M THANDE, J**

**MARCH 14, 2025**

**BETWEEN**

**DUNCAN MWANGI MUREITHI ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. The Applicant herein was charged and convicted of the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code* in Malindi HCCR Case No. 11 of 2009 and sentenced to death. Aggrieved by the said conviction and sentence, the Applicant filed Criminal Appeal No. 77 of 2014 in the Court of Appeal. The appeal was dismissed and both the conviction and sentence upheld.
2. The Applicant has come back to this Court vide a Petition, seeking review of his sentence citing *Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated)) [2017] KESC 2 (KLR) (14 December 2017) (Judgment) (Muruatetu case)* in which he says that the Supreme Court declared all mandatory sentences unconstitutional. He further urged that on account of his deteriorating health, he be considered for a lenient sentence and be granted a non custodial sentence for the remainder of his term.
3. The Respondent chose not to respond to the Application and left the matter to the Court.
4. At the very outset, this Court must determine whether it has jurisdiction to entertain the Application before it. The law, is that this Court may only exercise that jurisdiction which has been conferred upon it by *the Constitution*, statute or both. This was succinctly stated by the Supreme Court in the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR*, as follows:

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.

5. This Court derives its jurisdiction principally from Article 165(3) of *the Constitution* which confers upon it 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.

6. 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).

7. The Petitioner was convicted and sentenced by this Court. Additionally, the Applicant unsuccessfully appealed to the Court of Appeal which upheld both the conviction and sentence. What he now seeks is that this Court reviews its own decision and that of the Court of Appeal. While this Court has wide unlimited jurisdiction under Article 165 of *the Constitution*, it does not have jurisdiction over a superior court.

8. At the helm of the Court system in Kenya is the Supreme Court followed by the Court of Appeal. This Court falls below the Court of Appeal. After the Applicant was convicted by this Court, he appealed to the Court of Appeal and the same was dismissed. That decision of the Court of Appeal is binding on this Court. In light of this, to entertain this matter in respect of which the Court of Appeal has pronounced itself, no matter how compelling the arguments placed before it, would be to violate the constitutional judicial hierarchical norm.

9. In the case of *Kenya Hotel Properties Limited v Attorney General & 5 others* [2020] eKLR, where the Court of Appeal stated:

As we stated at the beginning of this judgment this appeal is disturbing. The multiplicity of endless proceedings around the same dispute does not bode well for the administration of justice...Its latest rising is the most baffling of all because the petition filed before the High Court sought strange prayers in that the Court there was being asked to annul, strike out, reverse or rescind a judgment of this Court, its elder sibling. In a system of law that is hierarchical in order, such as ours is, it seems to us that such a thing is quite plainly unheard of and for reasons far greater than sibling rivalry. *The Constitution* itself clearly delineates and demarcates what the High Court can and cannot do. One of things it cannot do by virtue of Article 165(6) is supervise superior courts.

Moreover, under Article 164(3) of *the Constitution*, this Court has jurisdiction to hear and determine appeals from the High Court. Its decisions are binding on the High Court and all courts equal and inferior to it. It is therefore quite unthinkable that the High Court could make the orders the appellant sought as against a decision of this Court to quash or annul them, or that it could purport to direct this Court to re-open and re-hear a concluded appeal.



We consider this to be a matter of first principles so that the appellant's submission that the issue pits supremacy of the courts against citizens' enjoyment of fundamental rights is really misconceived because rights can only be adjudicated upon by properly authorized courts. Any declaration by a court that has no jurisdiction is itself a nullity and amounts to nothing. It matters not how strongly a court feels about a matter, or how impassioned it may feel or how motivated it may be to correct a perceived wrong; without jurisdiction it would be embarking on a hopeless adventure to nowhere.

10. This finding of the Court of Appeal was affirmed by the Supreme Court in *Kenya Hotel Properties Limited v Attorney General & 5 others (Petition 16 of 2020)* [2022] KESC 62 (KLR) (Civ) (7 October 2022) (Judgment), which stated:
  55. We need to emphasize and reiterate that Mutunga CJ did not in any way state that the High Court may in any way, purport to overturn or order final decisions issued by higher courts than itself to start de novo, especially on appeals that have been finally concluded by the highest court at the time. Furthermore, the concurrence by Mutunga SCJ cannot override the judgment by the majority, despite what the appellant chooses to submit. As was thus rightly noted by the High Court and the Court of Appeal, the rule of thumb is that superior courts cannot grant orders to reopen or review decisions of their peers of equal and competent jurisdiction much less those court higher than themselves.
11. I am duly guided by the cited decisions. The Petitioner's appeal was heard and determined by the Court of Appeal, a fact that he admits. He cannot therefore invite this Court to reopen the matter and review the decision of a court superior to itself.
12. In light of the foregoing, the Court finds that the Petition herein is incompetent and the same is hereby struck out for want of jurisdiction.

**DATED, SIGNED AND DELIVERED IN MALINDI THIS 14<sup>TH</sup> DAY OF MARCH 2025**

**M. THANDE**

**JUDGE**

