



**Kavingo v Republic (Criminal Revision E128 of 2022)
[2025] KEHC 9423 (KLR) (4 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 9423 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL REVISION E128 OF 2022**

TM MATHEKA, J

APRIL 4, 2025

BETWEEN

MUTINDA MUVEVI KAVINGO APPLICANT

AND

THE REPUBLIC PROSECUTION

JUDGMENT

1. The applicant Mutinda Muvei Kavingo was charged in Makueni MCCR 436/14 with robbery with violence contrary to section 296(2) of the *Penal Code*;

The particulars of the offence state that on the second day of June, 2014 at Watuka village, Kako location, Mbooni East District within Makueni county, the accused jointly with others not before the court while armed with dangerous offensive weapons namely pangas and rungas robbed Daniel Muatha Kikondi of a briefcase containing assorted clothes, passports, two electric spotlight torches, 3 mobile phones, military binoculars all valued at Kshs.50,000/= and immediately after the time of such robbery used actual violence to one Daniel Muatha Kikonde.

Under counts II and III the accused has been charged with the offence of assault causing actual bodily harm contrary to section 251 of the *Penal Code*. The particulars of count II are that at the above mentioned place and time as in count I, the accused jointly with other not before the court unlawfully assaulted Nzioki Muinde thereby occasioning him actual bodily harm.

The particulars of count III are similar to those under count II save that the accused is accused of having assaulted Mutiso Kivindu. When called upon to plead to the charges, the accused denied all the charges and the case was set down for hearing.

2. He was tried, convicted for robbery with violence and sentenced to 20 years imprisonment.



3. He filed HCCRA 66 of 2019 (Makueni).
4. Appeal was heard by Hon. Ong’udiJ and in the judgment delivered on 8/5/2020 found the appeal without merit and dismissed it.
5. The applicant has now filed “petition”
(Pursuant to Art 22(1) of *the Constitution* of Kenya and Rule of *the Constitution* of Kenya Protection of rights and fundamental freedoms practice and procedure rules 2013). The petitioner do hereby petition the honourable court at Makueni for contemplation of the cited sections of laws of Kenya as prayers and orders sought, that;
 1. The petitioner has served 16 years in custody with the reminder 4 years.
 2. The petitioner is now aged 65 years old and has little chance of reengaging in criminal activities.
 3. Pursuant to cited sections of the laws of Kenya he prays to be committed to non-custodial sentence as provided for by the laws.
 4. He can obtain nil fees for this petition as he is in custodial imprisonment.
6. Notice of Motion seeking orders :
 1. That this application be certified urgent and heard expeditiously,
 2. The substantive constitutional petition be heard on priority basis,
 3. The petitioner has served the bulk of the sentence and humbly begs to serve the 4 years reminder as contemplated in the cited sections of the Laws of Kenya (CSO section 3 and 4b and probation act section 3 and 4b Cap 64 Laws of Kenya).
- 7) Supported by affidavit where he depones:
 1. That he is a Kenyan citizen male adult of sound mind to make an oath
 2. That he is the accused person in criminal case No. 17 of 2016 Machakos High Court.
 3. That his ground of petition are detailed herein a separate sheet.
 4. That all the facts deponed herein are true to the best of his knowledge and understanding and requests the Hon. Court to order as prayed for.
8. It is evident that what the applicant is seeking in other words is revision of his 20 years sentence which was upheld by this court.
9. Does this court have the jurisdiction to determine this application?
10. The jurisdiction of this court on revision is set out in Article 165(6) and (7) of *the constitution* section 362, 364 of the *Criminal Procedure Code*.
11. This court is also empowered to “hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights” as provided for under Article 23(1) of *the Constitution*.
12. The applicant/petitioner is required to demonstrate in the pleadings the rights that have been violated/ threatened with infringement – and who has done it. See Mumo Matemu vs Trusted Society of Human Rights Aliance & Others [2013] KECA 445 KLR



- (33) It is trite that the jurisdiction of any court provides the foundation for its exercise of judicial authority. As a general principle, where a court has no jurisdiction, it has no basis for judicial proceedings much less judicial decision or order. The applicable standard remains the statement of the Court of Appeal in *The Owners of Motor Vessel "Lillian S" v Caltex Oil Kenya Ltd* [1989] KLR 1 where it was stated:

“Jurisdiction is everything. Without it, a court has no power to make one step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence and a court of law downs its tools in respect of the matter before it, the moment it holds the opinion that it is without jurisdiction.”

13. Hence –

1. This court has no jurisdiction to revise the sentence,
2. No violation of constitutional rights has been established.
3. The application is dismissed for want of merit.

DATED, SIGNED AND DELIVERED THIS 4TH APRIL 2025

**SIGNED BY: LADY JUSTICE MATHEKA, TERESIA MUMBUA
JUDGE**

THE JUDICIARY OF KENYA.

MAKUENI HIGH COURT

HIGH COURT DIV

DATE: 2025-04-06 15:25:10

Applicant present

Kazungu for state Chrispol Court Assistant

Doc IDENTITY: 1886640208303831556719737881 Tracking Number:OOCM5A2025

