



REPUBLIC OF KENYA



KENYA LAW
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**SKK v Republic (Criminal Revision E136 of 2024)
[2025] KEHC 5226 (KLR) (25 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5226 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL REVISION E136 OF 2024**

M THANDE, J

APRIL 25, 2025

BETWEEN

SKK APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein was charged with of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code in *Malindi HCCR Case No. 20 of 2009*. In a judgment delivered on 10.2.12, this Court made a special finding under Section 166(1) of the Criminal Procedure Code and found the Applicant guilty but insane at the time of committing the offence. Aggrieved, the Applicant filed *Criminal Appeal No. 51 of 2020* in the Court of Appeal, which was dismissed. The Court of Appeal ordered that the Applicant “be taken to a mental hospital for medical treatment. He shall remain there until such a time as a psychiatrist in charge of the hospital certifies that he is no longer a danger to society or to himself.”
2. The Applicant has now come to this Court seeking:
 1. Spent:
 2. That the Hon. Court be pleased to review the residential pleasure (PP) sentence imposed by the High Court to the time already served of sixteen (6) years pursuant to Article 50(2)(p)(q) of the Constitution and in further pursuance to Kimaru & 17 others v Attorney General & another; Kenya national Human Rights and Equality Commission (Interested Party) (Petition 226 of 2020) KEHC 114 (KLR) (Constitutional and Human Rights) (1 February 2022) (Judgment).
 3. That the period spent in remand custody be computed into the eventual sentence to be awarded pursuant to the provisions of section 332(2) of the Criminal procedure Code and also



pursuant to *Jona & 87 others v Kenya Prison Service 72 others* (Petition 15 of 2020) [2021] KEHC 457 (KLR).

4. That should the eventual computation result into a balance of three (3) years or less, may the Hon. Court be pleased to grant me probation orders if my circumstances so fit.
 5. Any Other order that the Hon. Court deems fit to give in the interest of justice.
 6. That further grounds shall be adduced in the sworn supporting affidavit of SKK among other grounds to be adduced during the hearing of this application.
3. At the very outset, this Court must determine whether it has jurisdiction to entertain the Application before it. The law, is that a 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.”

4. 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.”

5. The superior courts in the court system in Kenya are listed in Article 162(1) of the Constitution as follows:

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

6. This Court has stated time and again that once a matter has been dealt with by the Court of Appeal, it cannot be returned to this Court for reopening and relooking at the same. The decision of the Court of Appeal on the Applicant’s appeal is binding on this Court. As such, this Court lacks the jurisdiction to entertain an application or make orders relating to a decision of the Court of Appeal, which would breach the constitutional judicial hierarchical order.

7. In my finding on jurisdiction, I am guided by the decision in *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."

8. 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 that 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.
9. Duly guided by the Constitution and the cited authorities this Court lacks jurisdiction to consider the present Application. The only time this Court could legally entertain a matter that has been heard and determined by the Court of Appeal is where a specific order has been made by that court that the matter be remitted to this Court for rehearing. There was no such order by the Court of Appeal in this matter. Accordingly, any order that would be made by this Court would be a nullity and amount to nothing for want of jurisdiction.
10. 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 25TH DAY OF APRIL 2025

M. THANDE
JUDGE

