



**Republic v Muhammad (Criminal Case 109 of 2023)
[2025] KEHC 6010 (KLR) (14 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6010 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE 109 OF 2023
WM MUSYOKA, J
MAY 14, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

MUGOYA MOHAMMUD ACCUSED

RULING

1. The accused person faces a charge of armed robbery against boats, contrary to section 371(b) of the *Merchant Shipping Act*, Cap 389, Laws of Kenya.
2. He was initially arraigned at the Chief Magistrate’s Court at Busia, in Busia CMCCRC No. E1217 of 2023, before the matter was transferred to the court at Port Victoria, and became Port Victoria SRMCCRC No. 109 of 2023. He denied the charges, and a trial was conducted, where the prosecution presented 10 witnesses. He was put on his defence, in a ruling which was delivered on 17th September 2024. He made his defence statement on 10th February 2025. The matter was marked for judgement, which was to be delivered on 16th April 2025.
3. On 16th April 2025, the trial court did not deliver a judgement, instead it delivered a ruling, where it pronounced itself as lacking jurisdiction, on account of section 2 of the *Merchant Shipping Act*, arguing that “court” is defined there to mean the High Court. It then directed that the matter be forwarded to the High Court for further directions. It is against that background that the matter is now before me.
4. The High Court has a revisional jurisdiction, under sections 364 to 367 of the *Criminal Procedure Code*, Cap 75, Laws of Kenya, the relevant parts of which state as follows:



“364.

Powers of High Court
on revision

(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may —

(a) —

(b) — the case of



any other order other than an order of acquittal, alter or reverse the order.

(c)

(a) ...

(b) in the case of any other order other than an order of acquittal, alter or reverse the order.

(c) ...

(2) No order under this section shall be made to the prejudice of



an
accused
person
unless
he
has
had
an
opportunity
of
being
heard
either
personally
or
by
an
advocate
in
his
own
defence ...

(3) ...

(4) ...

(5) When
an
appeal
lies
from a
finding,
sentence
or
order,
and no
appeal
is
brought,
no
proceeding
by way
of
revision
shall be
entertained



	at the insistence of the party who could have appealed.						
(1)	<p>In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—</p> <table border="1"> <tr> <td>(a)</td> <td>...</td> </tr> <tr> <td>(b)</td> <td>in the case of any other order other than an order of acquittal, alter or reverse the order.</td> </tr> <tr> <td>(c)</td> <td>...</td> </tr> </table>	(a)	...	(b)	in the case of any other order other than an order of acquittal, alter or reverse the order.	(c)	...
(a)	...						
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(c)	...						
(a)	...						
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(c)	...						



(2)	No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence ...
(3)	...
(4)	...
(5)	When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.
365.	<p>Discretion of court as to hearing parties</p> <p>No party has a right to be heard either personally or by an advocate before the High Court when exercising its powers of revision:</p> <p>Provided that the court may, when exercising those powers, hear any party either personally or by an advocate, and nothing in this section shall affect section 364(2).</p>



366.	<p>Number of judges in revision</p> <p>All proceedings before the High Court in the exercise of its revisional jurisdiction may be heard and any judgment or order thereon may be made or passed by one judge:</p> <p>Provided that when the court is composed of more than one judge and the court is equally divided in opinion, the sentence or order of the subordinate court shall be upheld.</p>
367.	<p>High Court order to be certified to lower court</p> <p>When a case is revised by the High Court it shall certify its decision or order to the court by which the sentence or order so revised was recorded or passed, and the court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified, and, if necessary, the record shall be amended in accordance therewith.”</p>

5. The revisional jurisdiction enables the High Court to review decisions of the subordinate court, which had disposed of the matter before it with finality. The High Court is required to examine the record of the trial court, for the purpose of satisfying itself of the correctness, legality or propriety of the order made, and as to the regularity of the proceedings of the trial court, and to vary the order in question, where the circumstances entitle the High Court to do so.
6. Of course, I did not call up the file from the subordinate court, but the order has come to my notice, upon the file being placed before me, as per the directions of the trial court, for directions. The directions that I will consider making are to be founded on whether the order, pronouncing that the trial court had no jurisdiction to try the accused person, under the *Merchant Shipping Act*, was correct, legal or proper, or whether the proceedings leading to that order were regular.
7. The revisional jurisdiction under the *Criminal Procedure Code* has received constitutional backing, through Article 165(6)(7) of *the Constitution* of Kenya, 2010, vide the supervisory jurisdiction that is provided for there, in the following terms:

“165. High Court

- (1) ...
- (2) ...
- (3) ...
- (4) ...
- (5) ...



- (6) 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) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”
8. The supervisory jurisdiction, under Article 165(6)(7) of *the Constitution* of Kenya, enables the High Court to call for the records of the subordinate court, and, upon considering that record, make any order or give any direction it considers appropriate, to ensure the fair administration of justice. Just like what I have said above, I have not called for the records in this matter, it is the trial court which has referred the matter to me, upon that court downing its tools, on grounds that it has no jurisdiction.
9. I believe that I am clothed with sufficient jurisdiction, under both *the Constitution* and the *Criminal Procedure Code*, to examine the record of the trial court, and give appropriate directions or make appropriate orders, to further fair administration of justice.
10. The offence, in respect of which the accused was arraigned herein, is defined in the *Merchant Shipping Act*, at section 371(b), which states as follows:
- “371. Offences of piracy and armed robbery
- Any person who—
- (a) commits any act of piracy;
- (b) in territorial waters, commits any act of armed robbery against ships,
- shall be liable, upon conviction, to imprisonment for life.”
11. The accused person was arraigned before the subordinate court, where he denied the charges, and a trial was conducted to conclusion. However, while preparing the judgement, the trial court formed the opinion that it had no jurisdiction to try the offence, the subject of that charge, on account of section 2 of the *Merchant Shipping Act*, which defines “court” to mean the High Court. That provision, in section 2, reads: ““court” means the High Court of Kenya.”
12. What section 2 of the *Merchant Shipping Act* does, by defining or interpreting “court,” at section 2, as the High Court, is to say that wherever a reference is made to “court” in the body of the *Merchant Shipping Act*, the “court” referred to in that instance would be the High Court. That would not be to mean that every little thing concerning the provisions of the *Merchant Shipping Act*, which must go to court, must be placed before the High Court. The interpretation, given to “court,” in section 2, is limited, in my view, to provisions which make a direct reference to “court,” so that any action or proceedings or order, provided for under any provision of the *Merchant Shipping Act*, to be made or conducted by a “court,” would have to go to or be by the High Court.
13. I have taken the trouble of going through the entire *Merchant Shipping Act*, and noted that there are several dozen provisions where there is specific reference to “court” and “Court.” I am not too sure what the distinction between “court” and “Court” is, in the context of the *Merchant Shipping Act*, given that section 2 interprets “court” and not “Court.” I cannot tell whether it should be of any relevance. I suspect that “court” would, perhaps, refer to any court of competent jurisdiction, while “Court” would be the High Court. I suppose that whether “court” and “Court” refer to the courts in general



and High Court, respectively, may well depend on the context, and the court may have to adopt a broad and purposive approach to interpretation of the text of the Act, to promote fairness and expedition in the administration of justice. These are matters that drafters ought to be sensitive to, otherwise they create uncertainty.

14. Whatever the case, the provisions, in the *Merchant Shipping Act*, specifically referencing “court” and “Court” are sections 83, 84, 85, 86, 93, 112, 115, 148(4)(5)(7), 149(3), 151, 153, 157, 158, 159, 182, 185(2)(3), 186, 190, 192, 300, 301, 316, 344, 347, 348, 350, 351, 353, 406, 424 and 425. These provisions are on the limitation period on maritime liens, disposal of proceeds of sale of a ship, claims against seafarers wages for maintenance, masters rights, refusal to work, reimbursement of costs, seafarers suing for damages, jurisdiction for recovery of seafarers wages, rescission of contracts, appeals from inquiries, conduct of inquiries, inquiries into fitness and conduct of seafarers, refusal to give evidence at inquiry, salvage and salvage disputes, limitation of time and rules of court. I am persuaded that jurisdiction is limited to the High Court only in respect of the above matters.
15. In other provisions, as mentioned above, “court,” rather than “Court,” is used, and I believe that would suggest subordinate courts would have jurisdiction. It is used, for example, in section 192, of the *Merchant Shipping Act*, with respect to liability for smuggling. At sections 300 and 301, with respect to criminal liability for rejection, disposal and forfeiture of dangerous goods. Section 316 specifically provides for power by magistrates to issue warrants, with respect to concealment of wrecks. There is also reference to “competent court.” “court” is also used in sections 426, 427 and 432, with respect to inquests into deaths, prosecution of offences and offences onboard ships.
16. The provisions that create offences under the *Merchant Shipping Act* do not refer to “court” and “Court.” They merely define the offences and prescribe the penalties. That omission, to refer to “court” and “Court,” in my humble view, disentangles them from the interpretation at section 2 of the Act, to “court” as the High Court, and that would mean jurisdiction to try the offences created under the *Merchant Shipping Act* should be exercised by the magistrate court.
17. The *Merchant Shipping Act* creates very many offences. It would be inconceivable that it was intended that all these offences, some of them very minor, were to be tried at the High Court, as suggested by the trial court, in its ruling of 16th April 2025. There are offences created in the following provisions: sections 14(4), 15(3), 21(6), 23, 27(2)(4)(6), 35(2), 36, 37(4), 38(6), 39(5), 46(5), 48, 49, 51(4), 54(4), 60(6), 66(3), 73, 74, 88, 89, 91, 92, 118(3)(4), 126, 129(2), 130(1), 162, 165, 166(4), 170(6), 172(1), 173(2), 174(2), 175(1), 176(2), 177(4), 179(5), 180(1)(2), 187, 198(10), 200(3), 201(4), 202(2), 204(2), 209, 210(2), 211(2), 215(2), 216(2), 217(4), 218(2), 224, 226(2), 228(3), 236, 250, 255, 264, 265, 266, 274, 275, 285, 287, 288, 295, 296, 298, 299, 304, 305, 306, 310, 314, 315, 361, 363, 364, 366, 367, 368, 370, 371, 372, 414 and 420.
18. The offences created are diverse, some minor some serious, some misdemeanours some felonies. They include offences relating to trading on Kenyan waters illegally, operating without insurance cover, registration of ships and vessels, marking of ships, custody of certificates of registry, use of improper certificates, failure to surrender certificates, provisional certificates, naming of ships, identity marks on fishing vessels, registration of alterations, tonnage regulations, registration of ship owners, forgery of documents, false declarations, false reports, utterance of forged and false documents, false evidence, character of Kenyan ships, nationality and colours, national flag on foreign ships, recruitment of seafarers, failure to file or report on change of crew, change of master, regulations on working conditions, complaints regarding provisions and water, manning regulations, prohibition of under manning, production of documents on qualification, crews’ knowledge of English, unqualified seafarers going to sea, certificate of competence and employment of children.



19. Others include conduct endangering ships and persons, disobedience and neglect of duty, failure to deliver cancelled or suspended certificates, official and other log books, seafarers identity documents, discharge books, handing over of documents by master, infringement of Collision Regulations, duty to render assistance following collision, notification of hazards to navigation, precautions in event of danger to navigation, duty to assist ships in distress and persons in danger at sea, regulations for signal for distress, reports on ship accidents, report of loss of ships, establishment and measurement and nautical publications and charts, fire and lights detrimental to navigation, ships navigation equipment and nautical publications.
20. There are also offences relating to inspection of ships, alteration of certificates, limits to passengers in ships, prohibition on proceedings on a voyage, load line regulations, deck cargo, carriage of grain, carriage and marking of dangerous goods, unsafe ships, receivership, dealing with ship wrecks, passenger ships, stowaways, unauthorized presence on board, safety of passengers, passenger returns, births and deaths onboard, hijacking and destroying of ships, piracy and armed robbery, endangering safe navigation and threats, obstructing ship inspectors, among others.
21. I have gone into the trouble of listing all these to demonstrate that the *Merchant Shipping Act* creates very many offences. I also seek to demonstrate that some of the offences are petty, some are grave. It cannot be the intention that the High Court would be the “court” for the purpose of trial of persons charged with all these offences.
22. There is ample case law on jurisdiction, with relation to these offences, created under the *Merchant Shipping Act*. In Barre Ali Farah & 6 others vs. Republic [2013] KEHC 1182 (KLR)(Muya, J), it was pronounced that magistrates have jurisdiction over these offences. In Hassan M. Ahmed vs. Republic [2009] KEHC 13 & 4249 (KLR)(Azangalala, J), it was stated that all levels and ranks of the magistracy, save for the Resident Magistrate, have jurisdiction to try these cases. There are also Abdiaziz Ali Abdulahi & 23 others vs. Republic [2014] KEHC 1698 (KLR)(Muya, J) and Attorney General vs. Mohamud Mohammed Hashi & 8 others [2012] KECA 256 (KLR)(Onyango Otieno, Visram, Koome, Okwengu & Maraga, JJA). Most of these cases, if not all of them, turned on piracy, which is an associate offence to armed robbery with respect to ships, as both are defined in section 371 of the *Merchant Shipping Act*. If the trial court had taken time to get judicial precedent on jurisdiction, no doubt, there would have been a different outcome.
23. The upshot would be that the decision, taken by the trial court, to down its tools, on the basis that it had no jurisdiction, was not proper and correct, and that made the proceedings, to that extent, irregular. I shall, as I hereby do, review it, by way of vacating or reversing it. The trial court records shall be placed before Hon. Njeru, SRM, with directions that she shall proceed to prepare judgment in the matter, as she is vested with the requisite jurisdiction.
24. I have conducted these proceedings in the record of the trial court, in Victoria SRMCCRC No. 109 of 2023, as I understand Article 165(7) of *the Constitution* of Kenya to be allowing me to do so, as it empowers me to “call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and ... make any order or give any direction” that I consider “appropriate to ensure the fair administration of justice.”

DELIVERED, DATED AND SIGNED, IN OPEN COURT, AT BUSIA, ON THIS 14TH DAY OF MAY 2025.

W MUSYOKA

JUDGE

