



**Lenanginda v Attorney General & 2 others (Petition E339 of 2024)
[2025] KEHC 9729 (KLR) (Constitutional and Human Rights) (12 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9729 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION E339 OF 2024

AB MWAMUYE, J

JUNE 12, 2025

BETWEEN

SAMUEL LENANGINDA PETITIONER

AND

THE ATTORNEY GENERAL 1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS 2ND RESPONDENT

**DEPUTY REGISTRAR OF THE HIGH COURT OF KENYA AT
KITUI 3RD RESPONDENT**

JUDGMENT

1. This petition arises from a protracted delay in the hearing of the Petitioner’s criminal appeal. The Petitioner, Samuel Lenanginda, was convicted of a criminal offence and lodged an appeal in 2012. Over twelve years later, that appeal remains unheard. Aggrieved by the delay, the Petitioner moved this Court under Article 22 of *the Constitution*, alleging that his fundamental rights have been violated by the inordinate delay. He cites violations of inter alia Article 25(c) (the non-derogable right to a fair trial), Article 47 (right to expeditious and fair administrative action), Article 48 (right of access to justice), Article 50 (fair hearing, including the right to trial without unreasonable delay and the right of appeal), and the constitutional principle in Article 159(2)(b) that “justice shall not be delayed”.
2. The Petitioner contends that the 12-year delay in progressing his appeal is a violation of his constitutional rights to a fair trial and fair hearing. He argues that Article 50(2)(e) of *the Constitution* which guarantees every accused person the right “to have the trial begin and conclude without unreasonable delay”– has been blatantly breached. Further, since he has already been convicted, he invokes Article 50(2)(q) which entitles a convicted person “if convicted, to appeal to, or apply for review by, a higher court as prescribed by law”. It is the Petitioner’s case that the appellate process is an



integral part of a fair trial, and an unreasonable delay in hearing his appeal effectively negates his right to a fair trial, as well as his right of access to justice (Article 48) and fair administrative action (Article 47). He emphasizes that under Article 25(c) the right to a fair trial is one of the fundamental rights that “shall not be limited”, under any circumstances.

3. The Petitioner therefore prays for declaratory relief that the delay in hearing his appeal violates his constitutional rights, and for appropriate remedies, potentially including an order for the expeditious hearing of the appeal or other orders to vindicate his rights (such as compensation for the violation).
4. The Respondents oppose the petition. In their Grounds of Opposition and submissions, they raise two primary objections. First, the Respondents argue that this Court lacks jurisdiction to intervene in the manner sought, because doing so would amount to supervising or directing the Court of Appeal, a superior court that is not subject to the High Court’s supervisory jurisdiction under *the Constitution*. They cite Article 165(6) of *the Constitution*, which explicitly withholds from the High Court any supervisory mandate over superior courts. In their view, the Petitioner is inviting this Court to overstep its constitutional bounds by effectively reviewing or managing the appellate process of the Court of Appeal, which is impermissible.
5. Second, the Respondents contend that the Petitioner has not demonstrated an actual violation of rights: they dispute the factual premise of a “12-year delay,” noting that there is insufficient evidence on record to confirm that the appeal has been pending that long or that the delay is wholly unjustified. The 2nd Respondent (DPP) submits that the Petitioner failed to show concrete correspondence or steps taken with the Court of Appeal registry to progress the appeal. They further argue that the petition is misconceived and premature, since the Petitioner could seek relief through the appellate court itself – for example, by applying for expedition of the hearing – instead of resorting to a constitutional petition. In addition, the Respondents assert that no specific wrongdoing by the DPP has been shown, and thus the claim against the 2nd Respondent in particular is misplaced.
6. Having considered the pleadings and submissions of the parties, the Court identifies the central issue for determination: Whether the High Court has jurisdiction (supervisory or otherwise) to intervene in respect of a pending appeal before the Court of Appeal specifically, whether Article 165(6) of *the Constitution* permits this Court to exercise supervisory jurisdiction over the Court of Appeal in the circumstances of this case.

High Court’s Supervisory Jurisdiction vis-à-vis the Court of Appeal

7. In our legal hierarchy *the Constitution* identifies the Supreme Court, the Court of Appeal and the High Court as the superior courts. Decisions of the Court of Appeal are binding on the High Court by virtue of Article 164(3). Even the High Court itself is not empowered to overturn or re-hear matters already disposed by a sister bench or a higher forum. The Appellate Division (like specialized divisions of the High Court) is of equal status to a single judge of this Court; at least it is not a “subordinate court.” As the Court of Appeal has held in *Karisa Chengo v Republic*, specialized courts created under Article 162(2) were “of equal rank” and “none had the jurisdiction to superintend, supervise... or review the mistake, real or perceived, of the other. A decision of the [Environment and Land Court] or the [Labour Court] could not be the subject of appeal to the High Court”. Likewise, one branch of the High Court cannot review the acts of another of equal status. To permit otherwise “would culminate in absurdity”.
8. Article 165(6) of *the Constitution* provides in no uncertain terms that “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.” Superior courts are defined by Article 162(1)



to include the Supreme Court, the Court of Appeal, the High Court, and courts of equal status to the High Court (such as the Employment and Labour Relations Court and the Environment and Land Court). The Court of Appeal, being a superior court established under Article 164, is plainly outside the supervisory reach of the High Court. *The Constitution* thus places a caveat on this Court, forbidding it from “questioning, reviewing, or setting aside decisions” of the Court of Appeal or otherwise purporting to supervise that court. This limitation is a deliberate safeguard of judicial hierarchy and independence: a superior court cannot be supervised by a court of lower or equal rank.

9. The Petitioner’s plea, at its core, asks this Court to intervene in the appellate process and redress the delay afflicting his appeal. While he has not directly sued the Court of Appeal or its officers, granting the relief sought for instance, an order that the appeal be heard within a specified time would effectively amount to this Court issuing directions to the Court of Appeal on how to conduct its business. That would be tantamount to supervision. Both precedent and constitutional principle bar this Court from doing so. In *Kenya Hotel Properties Ltd v. Attorney General & 5 others* (2018), the High Court faced a similar scenario: a petitioner sought to nullify a judgment of the Court of Appeal claiming it was rendered by a bench that included a judge later found unsuitable to hold office. The High Court emphatically held that it had “no jurisdiction to annul or review a decision of a superior court.” It observed that Article 165(6) in “plain language” imposes a constitutional limit on the High Court “not to do anything that would amount to supervising or superintending other superior courts.” That decision was upheld by the Court of Appeal on the same reasoning, and ultimately by the Supreme Court. The Supreme Court affirmed the “rule of thumb” that “superior courts cannot grant orders to reopen or review decisions of their peers of equal jurisdiction, much less those of courts higher than themselves.” These authorities make it abundantly clear that the High Court cannot exercise supervisory jurisdiction over the Court of Appeal, whether directly or indirectly.
10. The Petitioner, anticipating this jurisdictional obstacle, has argued that his case is anchored not on supervisory power per se, but on the High Court’s fundamental rights enforcement mandate under Article 165(3)(b) of *the Constitution*. He submits that since his petition alleges violation of rights in the Bill of Rights, this Court has jurisdiction to hear it notwithstanding the involvement of a superior court in the factual matrix. Indeed, the High Court does have jurisdiction “to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened” (Article 165(3)(b)). The Petitioner’s contention is essentially that when it comes to enforcing fundamental rights, the High Court’s authority is heightened – even vis-à-vis other courts – because the Bill of Rights is supreme. In support, his counsel invoked the fact that the right to fair trial (Article 25(c)) is non-derogable, suggesting that the High Court must be empowered to protect that right against any violator, including a superior court.
11. This Court is not persuaded by the Petitioner’s argument that a violation of fundamental rights by a superior court somehow elevates the High Court “above” that superior court. There is no special hierarchy of courts created for Bill of Rights enforcement. As the Court of Appeal stated in *Peter Ng’ang’a Muiruri v. Credit Bank Ltd* [2008] eKLR, there is no separate “constitutional court” in Kenya; the Constitutional and Human Rights Division is merely a division of the High Court, not a higher tribunal. The High Court exercising its constitutional mandate remains the High Court – it does not morph into an oversight body for other superior courts. Lenaola J. (as he then was) aptly dispelled this “fallacy” in *Philip Kipchirchir Moi v. AG & Another* [2013] eKLR, cautioning that the High Court (even in the Constitutional Division) cannot “superintend, direct, guide or correct the mistakes, real or perceived, of other Divisions of the High Court”. He emphasized that it could not have been the framers’ intention to permit one judge of the High Court to sit on appeal or review of another. By the same token, it surely was not intended that the High Court would sit in judgment over



the Court of Appeal under the guise of enforcing the Bill of Rights. Article 165(6) is a “constitutional edict” that explicitly withholds such power.

12. The Petitioner relies on Article 165(3)(b) and Article 23 which gives the High Court power to grant remedies for breach of rights to argue that any allegation of rights violation falls to this Court to adjudicate. He cites the High Court’s general jurisdiction to “uphold and enforce the Bill of Rights.” True, if a citizen’s rights are violated by an action of the state or any person, the High Court is the forum of first instance for redress. However, this general principle cannot override specific constitutional prohibitions. Article 165(6) acts as a jurisdictional limit – it carves out a sphere where the High Court simply cannot intrude, even if a litigant fashions the complaint in constitutional garb. In *Kenya Hotel Properties (supra)*, the petitioner similarly framed his grievance (seeking to overturn a Court of Appeal decision) as a constitutional issue, claiming violation of his fair trial rights.
13. The Supreme Court nonetheless struck out the petition, holding it had no jurisdiction to entertain a challenge against a superior court’s decision. The Supreme Court in that case underscored that one cannot sidestep the hierarchy of courts by invoking constitutional rights – a superior court’s decision (or process) cannot be reviewed by a lower court under any guise. If the High Court were to accept jurisdiction here, it would effectively place itself in an appellate or supervisory position over the Court of Appeal, contrary to the constitutional structure.
14. In light of the foregoing, the Court finds and holds that it lacks jurisdiction to issue orders that would amount to directing the Court of Appeal on how to manage or expedite the Petitioner’s pending appeal. The constitutional architecture, particularly Article 165(6), prohibits this Court from exercising supervisory authority over the Court of Appeal. To that extent, the reliefs sought by the Petitioner that imply this Court’s intervention in the appellate cause for example, an order compelling the Court of Appeal to hear the appeal within a given timeframe cannot be granted. Jurisdiction is the bedrock of judicial authority; without it, the Court must down its tools.
15. Before leaving this issue, the Court notes that the appropriate avenue for the Petitioner – from a procedural standpoint – would have been to approach the Court of Appeal itself. The Court of Appeal’s internal procedures such as Rule 60 of the Court of Appeal Rules, 2022, which the Petitioner cited in his pleadings provide mechanisms for a party to apply for urgent hearing or other managerial orders in an appeal.
16. In sum, this Court reaffirms that it has no supervisory jurisdiction over the Court of Appeal. The Petitioner cannot, through a collateral constitutional challenge, invoke the High Court’s authority to do indirectly what it cannot do directly. On this ground alone, the petition faces a formidable hurdle. Ordinarily, having found a lack of jurisdiction, a court ought to stop at that point. Indeed, as was observed in *Owners of the Motor Vessel “Lillian S” v. Caltex Oil (Kenya) Ltd [1989] KLR 1*, jurisdiction is everything.
17. In conclusion, this Court finds the High Court has no supervisory jurisdiction over the Court of Appeal. Article 165(6) of *the Constitution* categorically bars this Court from supervising or directing the Court of Appeal. Accordingly, to the extent the petition sought relief that would entail this Court intervening in the conduct of proceedings pending before the Court of Appeal, the Court lacks jurisdiction to grant such relief. The entire appeal is improper and this Court has no jurisdiction to entertain it.

Disposition

- a. This Court holds that it lacks jurisdiction to entertain this petition. The Petition is therefore dismissed for want of jurisdiction.



b. No orders as to costs.

18. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12TH DAY OF JUNE 2025.

BAHATI MWAMUYE

JUDGE

