



**Kobia v Republic (Miscellaneous Criminal Application E022 of 2024) [2025] KEHC 10817 (KLR) (23 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10817 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NANYUKI  
MISCELLANEOUS CRIMINAL APPLICATION E022 OF 2024**

**AK NDUNG’U, J  
JULY 23, 2025**

**BETWEEN**

**ISAAC MEME KOBIA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant, Isaac Meme Kobia moved this court through an undated notice of motion application filed in court on 16/09/2024 brought under Article 27, 50(2) (p) and 165 of the Constitution, Section 216, 329 & 333(2) of the Criminal Procedure Code for the main order that the Honourable court be pleased to invoke the provisions of Article 27 of the Constitution to the extent of the Applicant’s sentence as the sentence of death imposed disregarding the mitigation is harsh and inhuman and substitute thereof with a term of years in spirit of fair trial under Article 25(c) of the Constitution.
2. The application is based on the grounds on the face thereof and supported by his affidavit. The gist of the application is that the Applicant was charged with robbery with violence contrary to Section 296(2) of the Penal Code vide Criminal Case No 210 of 2011 and he was sentenced to death on 26/04/2014. He appealed to this court vide Criminal Appeal No. 56 of 2015 but the same was dismissed. His second appeal to the Court of Appeal, Criminal Appeal No. 56 of 2017 was also dismissed on 21/08/2024. That the application is premised on the persuasive order (f) by the High Court in Joseph Kaberia Kahinga & Others Petition No.618 of 2010 order No. 5 which stated that

“if the above orders are not complied with within stipulated period, the petitioners shall be at liberty to apply.”

That Section 216 & 329 of the Criminal Procedure Code gives the trial court sentencing discretion hence the proposition that trial court hands are tied by the mandatory nature of death sentence is legally erroneous.



3. In response, the Respondent’s counsel filed a notice of preliminary objection on the ground that the application is misplaced, ill-advised and incompetent since it is unsupported in law. That this court lacks jurisdiction to hear the application and that the application is an abuse of the court process and should be dismissed.
4. The Respondent’s counsel also filed written submissions on the preliminary objection. She argued that under Article 165(6) of the *Constitution*, the high court has supervisory jurisdiction over subordinate courts and over any person exercising judicial or quasi-judicial authority but not over superior courts. Therefore, this court does not have the jurisdiction to review the Applicant’s sentence due to the fact that he already appealed to the high court and the court of appeal and both appeals were heard and determined. Reliance was placed on the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* (2012) eKLR, *Kenya Hotel Properties Limited v Attorney General & 5 others* (Petition 16 of 2020)[2022] KESC 62 (KLR), *John Kagunda Kariuki v Republic* (2019) eKLR and *Ngao v Republic* (Petition E017 of 2023) [2024] KEHC 2008 (KLR) where in the latter case, the court while faced with a similar issue held that the court did not have jurisdiction to review its own decision and the decision of the court of appeal.
5. I have considered the application, the preliminary objection by the Respondent and the submissions. It is noted that the Applicant herein was charged in Nanyuki Criminal Case No. 210 of 2011 with robbery with violence contrary to section 296(2) of the *Penal Code*. He averred that he was convicted and sentenced to death. Being aggrieved by the trial court decision, he appealed to this court vide Criminal Appeal No. 56 of 2015 which appeal was heard and dismissed. His second appeal to the court of appeal vide Criminal Appeal 56 of 2017 was as well dismissed.
6. The Applicant now seek that his death sentence that was imposed by the trial court be reviewed and substituted with a definite sentence. Technically, the Applicant has invoked revisionary power of this court to review the sentence downward as the death sentence that was imposed disregarded his mitigation.
7. The jurisdiction of the High court is provided for under Article 165(3) of the *Constitution* and includes unlimited original jurisdiction in criminal and civil matters; jurisdiction to enforce bill of rights; appellate jurisdiction; interpretative jurisdiction; and any other jurisdiction, original or appellate, conferred on it by legislation. The High court further has supervisory jurisdiction over subordinate courts donated by Article 165(6) of the *Constitution* which states that;  

“(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.”
8. The court has revisionary powers under the sections 362 and 364 of the *Criminal Procedure Code* and extends only to –  

“...the power to call for the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”
9. The details of those powers of the High Court in revision are set out in Section 364.
10. As per Article 165(6) and the above section, the High Court can only review or exercise revisionary powers over a subordinate court.



11. There is no law which bestows this court with jurisdiction to review a decision by a court of concurrent jurisdiction and/or its own decision. No judge of the High Court can superintend over fellow judges of that court or of the superior courts. The Court of Appeal in *Peter Ng'ang'a Muiruri v. Credit Bank Ltd & 2 Others* Civil Appeal No. 203 of 2006 held that;

“It would be a usurpation of power to push forward such an approach, and whatever decision emanates from a court regarding itself as a constitutional court, with powers of review over decisions of concurrent or superior jurisdiction, such decision is at best a nullity.”

12. This court having dealt with the Applicant’s appeal on the sentence cannot again review its decision though passed by a different Judge. I have not come across any statutory provision that gives this court any criminal revisionary jurisdiction over its own findings, sentences or orders made or passed in exercise of its original or appellate criminal jurisdiction or jurisdiction over the findings of a superior court.

13. The court in *David Mutai v Republic* [2021] eKLR held that;

“Though the High Court has unlimited original jurisdiction in Criminal and Civil matters under Article 165(3)(a) of the *Constitution*, holding it that it encompasses revisiting issues dealt with by the same Court and a step higher by the Court of Appeal, is equivalent to according the High Court cosmic jurisdiction of which it doesn’t have. Litigation just like everything else bad or good, has an end. The end point in this one was at the Court of Appeal, but probably there’s a slight vent to the supreme Court. Having observed the foregoing, I do find that this Court lacks jurisdiction to re-sentence the petitioner as urged. The petition therefore lacks merit and is hereby dismissed.”

14. And in *Ngao v Republic* (*supra*), the court held that;

“The Petitioner’s appeals were heard and determined by this Court and the Court of Appeal, a fact that the Applicant admits. He cannot therefore invite this Court to tread on forbidden ground by reopening the matter to rehear the same, thus defying the constitutional hierarchy of the courts.”

15. From the foregoing, this court can only review the judgment of a subordinate court under the jurisdiction provided by sections 362 and 364 of the *Criminal Procedure Code* and has no jurisdiction to review its own decision or that of a superior court. Therefore, the Applicant’s application is clearly misconceived.

16. With the result that the preliminary objection raised herein succeeds and the application is dismissed.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 23<sup>RD</sup> DAY OF JULY 2025.**

**A.K. NDUNG’U**

**JUDGE**

