



**MOO v Republic (Miscellaneous Criminal Application
E038 of 2024) [2025] KEHC 9656 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9656 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL APPLICATION E038 OF 2024**

RN NYAKUNDI, J

JULY 4, 2025

BETWEEN

MOO APPELLANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

M/s Sidi for the State

1. Before this court is an application dated 2nd day of April 2024 seeking the following orders:
 - a. That this matter be certified as urgent and be heard at the first instance.
 - b. That the appellant was charged of offence of incest contrary to section 21(1) of the *sexual offences act* no. 3 of 2006 in criminal case no. SO 167 of 2018 at Eldoret and sentenced to life imprisonment.
 - c. That I appealed to the high court vide high court criminal appeal no 88 of 2017, whereby my appeal was dismissed at its entirety.
2. The application is premised on grounds that:
 - a. That the learned appellate judge erred in law by convicting and sentencing the appellant failing to note that the charge-sheet was defective.
 - b. That, the learned appellate judge erred in law by convicting and sentencing the appellant failing to note that the penetration of the complainant was not conclusively proved.



- c. That, the learned appellate judge erred in law by convicting and sentencing the appellant failing to note that the article 49 of the constitution was contravened against the appellant as he was held for more than 24 hours after being arrested.
 - d. That, further grounds shall be adduced at the hearing of this appeal.
 - e. That, I wish to be present during the hearing and determination of this appeal
3. In further support, the applicant swore a supporting affidavit stating as follows:
- a. That I am a male Kenyan adult of sound of mind and the appellant herein and as such conversant with the facts of the case and therefore competent to swear this affidavit
 - b. That the appellant was charged of offence of incest contrary to section 21(1) of the sexual offences act no. 3 of 2006 in criminal case no. SO 167 of 2018 at Eldoret and sentenced to life imprisonment
 - c. That I appealed to the high court vide high court criminal appeal no 88 of 2017, whereby my appeal was dismissed at its entirety
 - d. That the learned appellate judge erred in law by convicting and sentencing the appellant failing to note that the charge-sheet was defective
 - e. That, the learned appellate judge erred in law by convicting and sentencing the appellant failing to note that the penetration of the complainant was not conclusively proved
 - f. That, the learned appellate judge erred in law by convicting and sentencing the appellant failing to note that the article 49 of the constitution was contravened against the appellant as he was held for more than 24 hours after being arrested
 - g. That, further grounds shall be adduced at the hearing of this appeal
 - h. That, I wish to be present during the hearing and determination of this appeal
 - i. That I was not supplied the original copy of the original high court's proceeding and its judgement to enable me appeal on time but had intention to appeal
 - j. That due to my earlier intention to appeal, I be leave of this honorable court for extension to appeal out of time
 - k. That, I wish to be present during the hearing and determination of this appeal
 - l. That what I have deponed herein is true to the best of my knowledge, belief and trust
 - m. That I am a pauper thus I pray for a waiver

Decision

4. My reading of the application shows that the applicant has filed an appeal before the court of appeal. This court downs tools in proceeding to entertain any issues arising out of the criminal case heard and determined by this court. In the task of determining if the court has jurisdiction to hear and determine a case the following principles must be considered diligently by the judge:
- a. Whether the subject matter of the case is within the court's jurisdiction
 - b. Whether there is any feature in the case which prevents the court from exercising its jurisdiction, and



- c. Whether the case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction;
5. This issue of jurisdiction is of paramount importance on both personal and subject matter for a judge to give the various remedies prayed for at the interlocutory stage or at the end of the trial on the merits. This is what the courts had in mind in the cases of Public Service Commission & 2 Others vs. Eric Cheruiyot & 16 others consolidated with Civil Appeal no. 139 of 2017 County Government of Embu & Another vs Eric Cheruiyot & 15 others in which the doctrine of jurisdiction was adequately addressed:

By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of the matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exists. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.

6. The distinction between jurisdiction and power is often blurred, particularly in the context ‘inherent jurisdiction’ but the distinction may at times be important. Jurisdiction is the authority which a court has to decide the range of matters that can be litigated before it; in the exercise of that jurisdiction a court has powers expressly or impliedly conferred by the legislation governing the court and ‘such powers as are incidental and necessary to the exercise of the jurisdiction or the powers so conferred’. See *Harris v Caladine* (1991) 172 CLR 84
7. For those reasons the concept of the jurisdiction of this court allows me to down tools in granting any remedies wished for by the applicant. The motion shall remain dismissed under section 382 of the criminal procedure code
8. It is ordered.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 4TH DAY OF JULY 2025

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R. NYAKUNDI

JUDGE

