



REPUBLIC OF KENYA



**Momanyi v Republic (Criminal Revision E003 of 2024)  
[2024] KEHC 2079 (KLR) (1 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2079 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
CRIMINAL REVISION E003 OF 2024**

**M THANDE, J**

**MARCH 1, 2024**

**BETWEEN**

**DARREL MARTIN MOMANYI ALIAS ABDULATIF ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. By an application filed on 10.1.24, the Applicant seeks that the period of 3 years and 4 months from 23.9.13 to 6.4.16 spent in remand custody be considered as part of his 30 year sentence that was imposed upon him, in Malindi High Court Criminal Case No. 27 of 2013. The record shows that the Applicant was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. Following a full hearing, the Applicant was sentenced to 30 years imprisonment.
2. The Respondent did not file any response and stated that it did not oppose the time spent in remand be computed.
3. The Applicant has invoked this Court's power of revision provided for under Section 364 of the *Criminal Procedure Code* as follows:
  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. in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
    - b. in the case of any other order other than an order of acquittal, alter or reverse the order.
    - c. in proceedings under section 203 or 296(2) of the *Panel Code* (Cap. 63), the *Prevention of Terrorism Act* (Cap. 59B), the *Narcotic Drugs and Psychotropic Substances (Control)*



*Act* (Cap. 245), the *Prevention of Organized Crimes Act* (Cap. 59), the *Proceeds of Crime and Anti-Money Laundering Act* (Cap. 59A), the *Sexual Offences Act* (Cap. 63A) and the *Counter-Trafficking in Persons Act* (Cap. 61), where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.

2. ...
4. A careful reading of Section 364(1) will show that this Court’s power of revision is exercised in respect of proceedings in a subordinate Court. The Court exercises this power after the record of proceedings in a subordinate court has been called for or which has been reported for orders, or which otherwise comes to its knowledge. This power of revision is an aspect of the supervisory jurisdiction conferred upon this Court under Article 165(6) and (7) of *the Constitution*, which provides:
  - (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.
5. The power of revision does not apply to proceedings in the High Court. Additionally, by dint of the explicit provisions of Article 165(6), this Court does not have supervisory jurisdiction over a superior court.
6. What the Applicant seeks is that this Court exercises the power of revision over proceedings in this Court. It is trite law that this Court has no jurisdiction to revisit a matter that was determined and settled by a Court of concurrent jurisdiction.
7. In the case of *Bellevue Development Company Ltd v Francis Gikonyo & 7 others [2018]* eKLR, Kiage, JA stated considered of a judge reviewing the finding of a judge of concurrent jurisdiction and stated:

I have no difficulty upholding the learned Judge’s holding that as a judge of the High Court he had no jurisdiction to enquire into or review the propriety of the decisions of the Judges, who were of concurrent jurisdiction as himself. In our system of courts, which is hierarchical in nature, judges of concurrent jurisdiction do not possess supervisory jurisdiction over each other. No judge of the High Court can superintend over fellow judges of that court or of the superior courts of equal status. That much is plain common sense. It has, moreover, been expressly stated in Article 165(6) of *the Constitution* in these terms;

“The High Court has supervisory jurisdiction over the subordinate courts and over any other person, body or authority exercising a judicial or quasi judicial function, but not over a superior court.” (Our emphasis)

The learned Judge reasoned, correctly in my view, that an enquiry into the complaints in the appellant’s petition against the Judges called upon him to determine the lawfulness or good faith basis of both their decisions and their conduct, and he could not purport to arrogate to himself the power to review their decisions over which he had no authority. Such an undertaking would have been a plain nullity as had been stated by this Court in *Peter Ng’ang’a Muiruri Vs. Credit Bank Ltd & 2 Others Civil Appeal No. 203 of 2006*



which the learned Judge cited. The Court in dispelling the notion that a judge of concurrent jurisdiction could supervise fellow judges had stated as follows;

“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.”

This position is so well established that it would be a strange aberration for a judge to embark on what is essentially an examination of the judicial conduct and pronouncements of judges of the same status as himself, a task that is left to courts and judges of higher status in the hierarchy, by way of appeals.

8. Flowing from the foregoing, it is clear that this Court cannot supervise any other superior court of concurrent jurisdiction or superior jurisdiction. The constitutional supervisory jurisdiction and statutory revision jurisdiction of this Court is limited to subordinate courts and cannot be extended to superior courts.
9. In light of the foregoing, I decline the invitation by the Applicant to scrutinize and interrogate the decision of a judge of concurrent jurisdiction. The Applicant’s recourse lay in filing an appeal against sentence in the Court of appeal which is of higher status in the hierarchy of courts. Notably, the Applicant had filed and rightly so, a notice of appeal on 9.7.16 indicating an intention to appeal against the decision of this Court. However, by an order made on 20.3.19 and pursuant to an application by the Applicant’s counsel, the appeal was withdrawn under Rule 68 of the Court of Appeal Rules. Having withdrawn the appeal in the Court of Appeal which was the right forum to scrutinise the finding of this Court, it is not clear why the Application chose to return to this Court which is for all intents and purposes functus officio.
10. In the end, I find that the Application filed on 10.1.24, lacks merit and the same is hereby dismissed.

**DATED AND DELIVERED VIA MS. TEAMS THIS 1<sup>ST</sup> DAY OF MARCH 2024**

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**M. THANDE**  
**JUDGE**

