



**Chanze v Republic (Petition E013 of 2023)
[2024] KEHC 12175 (KLR) (11 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12175 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
PETITION E013 OF 2023
M THANDE, J
OCTOBER 11, 2024**

BETWEEN

ALEX HEBA CHANZE PETITIONER

AND

REPUBLIC RESPONDENT

JUDGMENT

1. In his Petition filed on 31.8.23, the Petitioner states that he was tried and convicted of the offence of defilement contrary to Section 8(1) as read with Section 8(3) of the *Sexual Offences Act* and sentenced to 15 years imprisonment. He filed an appeal in this Court which appeal was unsuccessful. He now seeks that this Court reconsiders his mitigation and review his sentence and order his release.
2. In support of his Petition, the Petitioner cited *John Kalama Chea v Republic* (Criminal Appeal 94 of 2015) [2017] KEHC 7679 (KLR) (16 February 2017) (Judgment) in which Chitembwe, J. set aside the life sentence imposed upon the appellant therein and substituted therefore the 4 years already served. He also relied on the cases of *James Mwangi Wanjama v Republic* (Petition 4 of 2018) [2019] KEHC 395 (KLR) (20 September 2019) (Ruling), and *Amedi Omurunga v Republic* (Criminal Appeal 37 of 2011) [2012] KEHC 3874 (KLR) (19 June 2012) (Judgment).
3. He pleaded that during the 3 years he has spent in prison, he has complied with prison regulations and has related well with fellow inmates. Further that he is married with 2 young children whose lives have been negatively impacted by his incarceration. He further stated that he has a medical condition that has negatively impacted on his health. He added that he is now reformed having engaged in Bible training and is ready to re-integrate back to society. He urged the Court to review his sentence.
4. The Petition is opposed by the Respondent vide a replying affidavit sworn on 27.12.23 by Joseph Mwangi, Prosecution Counsel. The Respondent averred that the Petitioner has readily admitted that he appealed to this Court without success. Further that instead of appealing to the Court of Appeal,



the Petitioner seeks to circumvent that process by filing this Petition. The Respondent contended that the sentence imposed was determined as a matter of fact by the trial court. Further that there is no law supporting the prayers sought in the Petition and that Section 46 of the *Prisons Act* is not available to the Petitioner as he is not due for remission. He added that litigation must come to an end and that allowing the Petition would open the flood gates as every imprisoned convict shall approach the Court with similar applications leading to endless litigation.

5. The first issue that this Court must determine is whether it has the jurisdiction to entertain the Petition. The law, is that this Court may only exercise that jurisdiction which has been conferred upon it by the *Constitution*, statute or both. In the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR the Supreme Court succinctly stated:

A Court's jurisdiction flows from either the *Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the *Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.

6. This Court derives its jurisdiction principally from Article 165(3) of the *Constitution* which confers upon this Court unlimited original jurisdiction in criminal and civil matters, the provision clearly delineates and demarcates what the Court can and cannot do. The jurisdiction of this Court includes supervisory powers. By dint of Article 165(6) however, this Court cannot supervise superior courts. It provides:

"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. The superior courts in the court system in Kenya are listed in Article 162 (1) of the *Constitution*, which provides:

The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts mentioned in clause (2).

8. The Petitioner's appeal was heard and dismissed by this Court, a fact that he Petitioner admits. What he now seeks is that this Court reviews its own decision, a jurisdiction it does not have. In this regard, I associate with the holding in *John Kagunda Kariuki v Republic* [2019] eKLR, where Ngugi, J, (as he then was) stated:

"10. In the present case, the Applicant's appeal has already been heard by the High Court. He cannot return to the High Court for a review of the sentence imposed. He is at liberty to make an argument for reduced sentence at the Court of Appeal."

9. By dint of Article 165(6), this Court thus lacks the jurisdiction to reopen the matter to relook at his sentence that was upheld by this Court, which is a superior court. The Petitioner's remedy lies in appealing to the Court of Appeal, the decision of this Court dismissing his appeal.



10. In light of the foregoing, I find that the Petition filed on 31.8.23 is incompetent for want of jurisdiction, and the same is hereby struck out.

DATED, SIGNED AND DELIVERED IN MALINDI THIS 11TH DAY OF OCTOBER 2024

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M. THANDE

JUDGE

