



**Meza v Republic (Petition E023 of 2023)  
[2024] KEHC 12243 (KLR) (11 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12243 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
PETITION E023 OF 2023  
M THANDE, J  
OCTOBER 11, 2024**

**BETWEEN**

**KITSAO CHAKA MEZA ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. By a Petition filed on 6.12.23, the Petitioner seeks review of the sentence imposed upon him. He also seeks that new sentence take into account the period spent in custody pending trial. He further urged that he be discharged on a non-custodial sentence to help him rebuild his life.
2. The Petitioner stated that he was charged with the offence of dealing in a specified wildlife species contrary to Section 92(2) of the *Wildlife Conservation and Management Act*. He further stated that following trial, he was convicted and sentenced to 7 years imprisonment. Further that he has neither appealed the conviction nor sentence. He urged that he was a first offender and was remorseful. Further that he has fully reformed through the rehabilitation programmes offered in prison. He cited Article 25(c) 27 and 50 of the *Constitution* to support his Petition.
3. The Petition is opposed by the Respondent vide grounds of opposition dated 23.4.24. The grounds are that the Petitioner has admitted that he has not appealed the judgment of the lower court; that the sentence was determined as a matter of fact and that this Court lacks jurisdiction to interfere with the sentence through the present application; that the authorities cited are not applicable since the trial court did not imposed a minimum mandatory sentence. The Respondent urged that the Petition be dismissed.
4. 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.

5. 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 as provided for under Article 165(6) as follows:

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.

6. The *Constitution* has conferred upon this Court supervisory jurisdiction over subordinate courts. Article 165(6) and (7) provides as follows:

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

7. In exercise of its supervisory jurisdiction, this Court is empowered to call for the record of proceedings in such subordinate courts, and make and give appropriate orders and directions as it deems necessary to ensure the fair administration of justice.

8. To give effect to this provision with regard to criminal matters, the Criminal Procedure Code elaborates the purpose of calling for the record of proceedings in subordinate courts by this Court, which is to satisfy itself as to the correctness, legality or propriety of any finding or order. Section 362 of the *Criminal Procedure Code* provides:

The High Court may call for and examine 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. Where the Court finds after examining the record of proceedings before a subordinate court that the same are wanting in correctness of that there is illegality or impropriety of a finding, order or sentence, the Court may by dint of the revision powers conferred upon it by Section 364 enhance the sentence or alter or reverse the order except that of an acquittal.

10. Section 364(5) is explicit that when an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.



11. Section 347 of the *Criminal Procedure Code* provides that a person convicted on a trial held by a subordinate court may appeal to the High Court. The Petitioner has stated that he has not appealed against his sentence but seeks that this Court reviews the same. Our courts have repeatedly stated in many cases, that where a clear procedure for redress is prescribed by the Constitution or a statute, that procedure should be strictly followed. One such case is *Speaker of the National Assembly v James Njenga Karume* [1992] eKLR where the Court of Appeal stated:

In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.

12. The Petitioner has not demonstrated that the sentence imposed upon him is illegal. In the premises the orders sought by the Petitioner cannot be granted by this Court sitting as a constitutional court. Flowing from the above stated provisions of the law and the authority cited, the Petitioner's redress lies with the appellate court. It is in the exercise of its appellate jurisdiction that this Court can examine the record and look at the sentence complained about and make a decision thereon.

13. In light of the foregoing, the Petition filed on 6.12.23, being devoid of merit, is hereby dismissed.

**DATED SIGNED AND DELIVERED IN MALINDI THIS 11<sup>TH</sup> DAY OF OCTOBER 2024**

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**M. THANDE**

**JUDGE**

