



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT GARISSA**

**CRIMINAL MISC. APPLICATION NO. 3 OF 2019**

**ABDI RASHID ADEN HUSSEIN.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The applicant was charged with offence of robbery with violence contrary to section 296(2) of the Penal Code. However he was convicted to a lesser offence of handling stolen goods and was sentenced to serve 10 years.
2. He filed appeal No. 3 of 2012 in Garissa whereof the High Court dismissed appeal and substituted sentence to that of death.
3. The applicant now moves this court on the basis of the Supreme Court case of *Muruatetu* which held that the mandatory aspect of death sentence is unconstitutional. The order of sentencing to death was made by a judge of same jurisdiction as this court under the provisions of Article 165 of Constitution which mandates High Court to exercise supervisory jurisdiction over subordinates' courts and tribunals.
4. It is notable that while Article 165 gives the High Court supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, it forbids it from exercising supervisory jurisdiction over a fellow superior court. Article 165(6) is unequivocal that:  
  
***“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.”***  
***Article 165(5)(b) provides that, “The High Court shall not have jurisdiction in respect of matters, “(b) falling within the jurisdiction of the courts contemplated in Article 162(2),” The High Court may also not handle matters that are exclusively designated for the Supreme Court as stipulated under Article 163(3), one being the jurisdiction to hear and determine disputes relating to elections to the office of the President.”***
5. Regarding the jurisdiction of the ‘status courts’, the court set out this clearly in the case of ***United States International University (USIU) vs Attorney General & 2 Others High Court at Nairobi Petition No. 170 of 2012***, in which **Majanja J.** exhaustively interrogated the status of the Industrial Court established under the new Constitution and whether ‘having the status of the High Court’ for all intent and purposes meant a superior court entitling it to determine constitutional issues emanating from labour-related matters.
6. The learned judge opined that the jurisdiction bestowed upon the High Court under Article 165(3) was not absolute;
7. Thus the order made by the High Court judge cannot be tempered with by this court but the Court of Appeal. Thus this court declines from making the order sought.

**(i) Thus the application for resentencing is therefore dismissed.**

**DATED, DELIVERED AND SIGNED AT GARISSA THIS 21<sup>ST</sup> DAY OF JANUARY, 2020.**

.....

**C. KARIUKI**

**JUDGE**