



**Onyango v Republic (Criminal Revision E334 of 2024)  
[2025] KEHC 14209 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14209 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CRIMINAL REVISION E334 OF 2024  
WM KAGENDO., J  
OCTOBER 9, 2025**

**BETWEEN**

**AUGUSTINE OTIENO ONYANGO ..... APPLICANT**

**AND**

**THE REPUBLIC ..... RESPONDENT**

***(ORIGINATING FROM CR. CASE NO.219 OF 2019 IN CM'S COURT  
AT VOI (F.M. NYAKUNDI SRM), HCCR APP NO.E035/2021 AT VOI  
(J. MATIVO.J) AND C.A CR APP NO E008/2023 AT MOMBASA)***

**RULING**

1. The Applicant was charged alongside two others before the Principal Magistrate's Court at Voi with the offence of trafficking in narcotic drugs contrary to section 4(a) of the Narcotic Drugs and Psychotropic Substances Control Act No. 4 of 1994. He was found guilty, convicted, and sentenced to pay a fine of Kshs. 1,000,000, in default to serve ten (10) years imprisonment.
2. The Applicant appealed the conviction and sentence in High Court Criminal Appeal No. E035 of 2021 at Voi. The appeal was heard and determined by Hon. Justice Mativo, JA (as he then was), and was dismissed on 3rd October 2022. No further appeal was filed before the Court of Appeal.
3. The issue of sentence has already been exhaustively addressed. This Court lacks jurisdiction to further review the sentence. The Applicant essentially seeks to have this Court sit on appeal over a decision rendered by a court of concurrent jurisdiction. This application amounts to an abuse of the court process and cannot be entertained. In Daniel Otieno Oracha v Republic [2019] eKLR, Aburili J aptly addressed the issue of jurisdiction and abuse of process.
4. Jurisdiction is conferred by statute and *the Constitution*, notably Article 165. In Samuel Kamau Macharia & Another v Kenya Commercial Bank & 2 Others, Application No. 2 of 2011, the Supreme



Court emphasized that a court cannot arrogate itself jurisdiction beyond what is conferred by law, nor can it expand its jurisdiction through judicial innovation.

5. The judgment rendered by Hon. Justice Abida Ali-Aroni was made in accordance with the law and remains unchallenged. This Court cannot sit on appeal over its own decision or that of a court of equal and competent jurisdiction, especially where the Applicant had the opportunity to escalate the matter to the Court of Appeal, even on sentence alone.
6. Principles of good governance and judicial propriety dictate that cases be handled procedurally and in the appropriate forum. Superior courts cannot review or appeal decisions of their peers of equal jurisdiction, let alone those of higher courts. Matters falling under the exclusive jurisdiction of the Supreme Court pursuant to Article 163(3) of *the Constitution* are beyond the purview of this Court.
7. Although a positive sentence review report was filed, it does not disclose any exceptional circumstances, such as ill health, that would warrant interference with the sentence.
8. Additionally, the review ought to have been filed and heard at Voi.
9. For the foregoing reasons, and guided by the principle laid down in Owners of Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR, I must down my tools. Without jurisdiction, a court of law acts in vain.
10. Accordingly, this Petition is found to be frivolous, vexatious, an abuse of the court process, and without jurisdiction. It is hereby struck out.
11. The application is dismissed

**DATED, SIGNED AND DELIVERED IN OPEN COURT/VIRTUALLY VIA MS TEAMS ON THIS 9TH DAY OF OCTOBER, 2025.**

**HON. LADY JUSTICE W. K. MICHENI JUDGE**

In the presence of:

The Applicant In Person Mr Ngiri Fir The State

Ms Bebora Court Assistant

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