



REPUBLIC OF KENYA



**KENYA LAW**  
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**Lesiuloi v Republic (Criminal Revision E230 of 2024)  
[2025] KEHC 15186 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15186 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NANYUKI  
CRIMINAL REVISION E230 OF 2024  
AK NDUNG'U, J  
OCTOBER 23, 2025**

**BETWEEN**

**TIPANAE LESIULOI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant, Tipanae Lesiuloi moved this court through an undated notice of motion application filed in court on 05/06/2024 seeking for orders that;
  - i. He be granted a review of his sentence of 30 years imprisonment.
  - ii. The court be pleased to take into account the period he has spent in custody as from 2011, hence 13 years.
  - iii. The court be pleased to hear and determine the sentence revision herein and give a lenient sentence or give any other order may deem fit.
  - iv. The court be pleased to adopt the provisions of law and precedents on matters of sentencing and mitigation.
2. The application is supported by his affidavit where deposed that he was arrested on 19/06/2011 and was charged with robbery with violence and he was convicted and sentenced to suffer death. He appealed to the high court vide Nanyuki Criminal Appeal No. 94 of 2017 which was dismissed. He lodged his second appeal to the Court of Appeal and the sentence was reduced to 30 years imprisonment. He deponed that he has rehabilitated, reformed and changed as the prison has various training which he has fully participated in. That he now seeks the sentence to be reviewed downward and he be granted a lenient sentence of probation or community service or any other as the court may be pleased to award.



3. In opposing the application, the Respondent's counsel filed a notice of preliminary objection on the ground that this court lacks jurisdiction to entertain, hear and or determine the application and that the application is an abuse of the court process and should be dismissed.
4. The Respondent's counsel filed written submissions and argued that under Article 165(6) of *the Constitution*, the high court has supervisory jurisdiction over subordinate courts and over any person exercising judicial or quasi-judicial authority but not over superior courts. Therefore, this court does not have the jurisdiction to review the Applicant's sentence due to the fact that he already appealed to the high court and the court of appeal and his appeals were heard and determined. Reliance was placed on the case of Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others (2012) eKLR, Kenya Hotel Properties Limited v Attorney General & 5 others (Petition 16 of 2020)[2022] KESC 62 (KLR), John Kagunda Kariuki v Republic (2019) eKLR and Ngao v Republic (Petition E017 of 2023) [2024] KEHC 2008 (KLR) where in the latter case, the court while faced with a similar issue held that the court did not have jurisdiction to review its own decision and the decision of the court of appeal.
5. The Applicant filed written submissions and what he terms mitigation. He submitted that following the decision in Muruatetu 1 and the case of Maurice Kaberia & 11 others v Republic which annulled mandatory nature of death and life sentences, the minimum mandatory provisions under the offence of robbery with violence fetter the discretion of judges on what sentence to mete. That the court in Kaberia, Miscellaneous application number 472 of 2019 guided by the above precedents granted the appellant an opportunity of a resentencing hearing and acquitted him on account that the period spent was enough. He urged the court to grant him the same remedy. He expressed that he is remorseful and urged the court to consider that he was young at the time of commission of the offence, he was a first time offender and he has now reformed and that during his time in prison, he has never been involved in any indiscipline issue and he intend to maintain the discipline if given a second chance. He maintained that he has rehabilitated as he has undertaken some rehabilitation program. He urged the court to grant him a non- custodial sentence so that he can be of service to the community and in the alternative of a non -custodial service, that he be acquitted on account that the 14 years he has spent in custody is enough or give a sentence that is fair, just and reasonable guided Kaberia case (supra) among other cases.
6. I have considered the application, the preliminary objection and the submissions by both parties. It is noted that the Applicant herein was charged in Maralal Criminal Case No. 435 of 2011 with robbery with violence contrary to Section 296(2) of the Penal Code. He was convicted and sentenced to death. Being aggrieved by the trial court decision, he appealed to this court vide Criminal Appeal No. 94 of 2017 which appeal was heard and dismissed. His second appeal to the court of appeal, Criminal Appeal 192 of 2017 succeeded partially where the sentence was reviewed to thirty (30) years imprisonment.
7. He now seeks that the 30 years imprisonment imposed by the court of appeal be reviewed downward and that this court grant him a non-custodial sentence or in the alternative, that he be acquitted on account that the time spent in prison is enough.
8. The jurisdiction of the High court is provided for under Article 165(3) of *the Constitution* and includes unlimited original jurisdiction in criminal and civil matters; jurisdiction to enforce bill of rights; appellate jurisdiction; interpretative jurisdiction; and any other jurisdiction, original or appellate, conferred on it by legislation. The High court further has supervisory jurisdiction over subordinate courts donated by Article 165(6) of *the Constitution* which states that;
  - (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.



9. This court is also specifically bestowed a, what in my view, is a very narrow review jurisdiction under sections 362 and 364 of the Criminal Procedure Code which power extends only to;

“...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.”
10. The details of those powers of the High Court in revision are set out in Section 364.
11. From a reading of Article 165(6) and the above section, the High Court can only review or exercise revisionary powers over a subordinate court.
12. There is no law which bestows this court with jurisdiction to review a decision by a court of concurrent jurisdiction and/or its own decision. No judge of the High Court can superintend over fellow judges of that court or of the superior courts. The Court of Appeal in *Peter Ng’ang’a Muiruri Vs. Credit Bank Ltd & 2 Others Civil Appeal No. 203 of 2006* held that;

“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.”
13. This court having dealt with the Applicant’s appeal on the sentence cannot again review its decision though passed by a different Judge. This court cannot also review decision of the court of appeal. I have not come across any statutory provision that gives this court any criminal revisionary jurisdiction over its own findings, sentences or orders made or passed in exercise of its original or appellate criminal jurisdiction or jurisdiction over the findings of a superior court.
14. The court in *David Mutai v Republic [2021] eKLR* held that;

“Though the High Court has unlimited original jurisdiction in Criminal and Civil matters under Article 165(3)(a) of *the Constitution*, holding it that it encompasses revisiting issues dealt with by the same Court and a step higher by the Court of Appeal, is equivalent to according the High Court cosmic jurisdiction of which it doesn’t have. Litigation just like everything else bad or good, has an end. The end point in this one was at the Court of Appeal, but probably there’s a slight vent to the supreme Court. Having observed the foregoing, I do find that this Court lacks jurisdiction to re-sentence the petitioner as urged. The petition therefore lacks merit and is hereby dismissed.”
15. The court in *Stephen Mugendi Ndwiga v Republic [2021] eKLR* observed that;

“It is my considered view that this court cannot review a judgment of Hon. S. Chitembwe J and in doing so resentence the petitioner herein...Further this court is bereft of jurisdiction to review the said judgment as doing so would be tantamount to sitting as an Appellate court on the judgment of the Learned Judge and which act the law abhors. In the same breath, this court cannot review the said judgment and in doing so take into account the time the petitioner had spent in custody. The same ought to have been dealt by Hon. Chitembwe J as the first appellate court. Failure by the said first appellate court to consider the said period cannot be rectified by this court as the same shall be akin to reviewing the decision of a court of concurrent jurisdiction.”



16. Further illumination on the issue is found in the decision in *John Kagunda Kariuki v Republic* [2019] eKLR, where Ngugi J (as he then was) expressed himself as follows;

“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.

At the helm of the Court system in Kenya is the Supreme Court followed by the Court of Appeal. This Court falls below the Court of Appeal. After the Applicant’s appeal in this Court was dismissed, he appealed to the Court of Appeal and the same was dismissed. That decision of the Court of Appeal is binding on this Court. In light of this, to entertain this matter in respect of which the Court of Appeal has pronounced itself, no matter how compelling the arguments placed before it, would be to violate the constitutional judicial hierarchical norm. In this regard, I am guided by the holding in the case of *Kenya Hotel Properties Limited v Attorney General & 5 others* [2020] eKLR, where the Court of Appeal stated: As we stated at the beginning of this judgment this appeal is disturbing. The multiplicity of endless proceedings around the same dispute does not bode well for the administration of justice...Its latest rising is the most baffling of all because the petition filed before the High Court sought strange prayers in that the Court there was being asked to annul, strike out, reverse or rescind a judgment of this Court, its elder sibling. In a system of law that is hierarchical in order, such as ours is, it seems to us that such a thing is quite plainly unheard of and for reasons far greater than sibling rivalry. *The Constitution* itself clearly delineates and demarcates what the High Court can and cannot do. One of things it cannot do by virtue of Article 165(6) is supervise superior courts. Moreover, under Article 164(3) of *the Constitution*, this Court has jurisdiction to hear and determine appeals from the High Court. Its decisions are binding on the High Court and all courts equal and inferior to it. It is therefore quite unthinkable that the High Court could make the orders the appellant sought as against a decision of this Court to quash or annul them, or that it could purport to direct this Court to re-open and re-hear a concluded appeal. We consider this to be a matter of first principles so that the appellant’s submission that the issue pits supremacy of the courts against citizens’ enjoyment of fundamental rights is really misconceived because rights can only be adjudicated upon by properly authorized courts. Any declaration by a court that has no jurisdiction is itself a nullity and amounts to nothing. It matters not how strongly a court feels about a matter, or how impassioned it may feel or how motivated it may be to correct a perceived wrong; without jurisdiction it would be embarking on a hopeless adventure to nowhere”.

17. There has been a serious misapprehension of the law lately following the decision of the Supreme Court in *Muruatetu 1* which indeed prompted the Supreme Court to provide clarity in *Muruatetu 2* that the decision therein only applied to murder cases and restricted to situations where the Accused was not accorded a chance to mitigate. Where mitigation is received by the court and considered, the discretion of the court to sentence in accordance to existing law remains unfettered and the court has the power to mete out a sentence of death since the said sentence remains legal in our penal code.
18. The Applicant has already approached the Court of Appeal, a court higher in hierarchy than this court where in its wisdom that court reduced his sentence to 30 years imprisonment. This court, and to



borrow the biblical word in John 1:27; cannot undo what the Court of Appeal has decreed. The verse goes;

“He is the one who comes after me , the straps of whose sandals I am not worthy to untie”

19. From the foregoing, this court can only review the judgment of a subordinate court under the jurisdiction provided by Sections 362 and 364 of the Criminal Procedure Code and the supervisory powers over subordinate court’s donated by Article 165(6) of *the constitution*. I must add for good measure that such review would not extend to review of legal sentences arrived at through proper application of existing law and procedure.
20. With the result that the application herein fails for want of jurisdiction and is dismissed.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 23<sup>RD</sup> DAY OF OCTOBER, 2025.**

**A.K. NDUNG’U**

**JUDGE**

