



**Mkalla v Republic (Miscellaneous Criminal Application E090 of 2025)
[2025] KEHC 15655 (KLR) (31 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15655 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
MISCELLANEOUS CRIMINAL APPLICATION E090 OF 2025
M THANDE, J
OCTOBER 31, 2025**

BETWEEN

SAID MWABEJA MKALLA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein was charged and convicted in Mariakani Criminal Case No. E196 of 2022 of the offence of grievous harm contrary Section 234 of the Penal Code. He was sentenced to 9 years imprisonment.
2. The Applicant have now moved to this Court seeking that he be granted probation orders for the balance of his term, which after remission pursuant to Section 46 of the *Prisons Act* will be less than 3 years.
3. The Respondent opted not to file a response to the Application and left it to the Court.
4. The Applicant's Criminal Appeal No. E023 of 2023 was dismissed by this Court.
5. It is trite that 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 Applicant's appeal was heard and dismissed by this Court which is a superior court. He cannot by dint of Article 165(6) of *the Constitution* return to this Court for review of his sentence. 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.

8. In light of the foregoing, I find that the Application herein is incompetent for want of jurisdiction, and the same is hereby struck out.

DATED, SIGNED AND DELIVERED IN MALINDI THIS 31ST DAY OF OCTOBER 2025

M. THANDE

JUDGE

