



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muyugo v Republic (Criminal Revision E084 of 2025)  
[2025] KEHC 15701 (KLR) (31 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15701 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
CRIMINAL REVISION E084 OF 2025  
M THANDE, J  
OCTOBER 31, 2025**

**BETWEEN**

**JOHANA LWEBE MUYUGO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicants herein was convicted of the offence of defilement in Kilifi Criminal Case No. 489 of 2013 and sentenced to life imprisonment. They appealed to this Court in Criminal Appeal No. 9 of 2016, against both conviction and sentence which appeal was dismissed and sentence upheld. Unrelenting, the Applicant filed Criminal Appeal No. 19 of 2018 in the Court of Appeal. His conviction was upheld but the life sentence was set aside and imposed a sentence of 25 years imprisonment.
2. The Applicant have now come back to this Court seeking that the Court considers the period spent in custody pending trial, and reduce his sentence accordingly.
3. The Respondent opted not to respond to the Application.
4. 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.

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. 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.

6. The Applicant's appeals were heard and determined by this Court and the Court of Appeal which are superior courts. By dint of Article 165(6) of *the Constitution* therefore, this Court lacks the jurisdiction to reopen the matter to relook at their sentence. In court system in Kenya the superior courts are listed in Article 162(1) of *the Constitution* as follows:

The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts mentioned in clause (2).

7. 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. The decision of the Court of Appeal dismissing the Applicant's appeal is binding on this Court. By his Application, the Applicant seeks that this Court re-opens and re-hears a concluded appeal and reviews the judgment of the Court of Appeal, a court superior to it. To entertain this matter in respect of which the Court of Appeal has pronounced itself therefore, no matter how compelling the arguments placed before it, would be to violate the constitutional judicial hierarchical norm.
8. In the case of *Kenya Hotel Properties Limited v Attorney General & 5 others* [2020] eKLR, the Court of Appeal addressed the judicial hierarchical orders and 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.

9. This finding of the Court of Appeal was affirmed by the Supreme Court in *Kenya Hotel Properties Limited v Attorney General & 5 others* (Petition 16 of 2020) [2022] KESC 62 (KLR) (Civ) (7 October 2022) (Judgment), which stated:
  55. We need to emphasize and reiterate that Mutunga CJ did not in any way state that the High Court may in any way, purport to overturn or order final decisions issued by higher courts than itself to start de novo, especially on appeals that have been finally concluded by the highest court at the time. Furthermore, the concurrence by Mutunga SCJ cannot override the judgment by the majority, despite what the appellant chooses to submit. As was thus rightly noted by the High Court and the Court of Appeal, the rule of thumb is that superior courts cannot grant orders to reopen or review decisions of their peers of equal and competent jurisdiction much less those court higher than themselves.
10. Without jurisdiction to supervise a superior court, this Court cannot reopen or review the decisions of its peers of equal and competent jurisdiction, much less those of a court higher than itself.
11. In light of the foregoing, the Court finds that the Application herein is incompetent for want of jurisdiction and the same is hereby struck out.

**DATED, SIGNED AND DELIVERED IN MALINDI THIS 31<sup>ST</sup> DAY OF OCTOBER 2025**

**M. THANDE**

**JUDGE**

