

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NANYUKI**

**CRIMINAL REVISION CASE NO E020 OF 2024**

**JOSHUA BUNDI NGANATHA.....**

**APPLICANT**

**VERSUS**

**REPUBLIC.....**

**.....RESPONDENT**

**R U L I N G**

**1.** This ruling resolves the preliminary objection by the Respondent on the jurisdiction of the court to determine the application herein.

**2.** The Applicant moved this court through an undated Notice of Motion application brought under **Article 165(6) of the Constitution 2010** and **Section 4 of the Probation of Offenders Act** seeking the following orders:-

*i) Spent*

ii) That the Honourable Court be pleased to revise the sentence mitigated upon the Applicant and consider the period remaining to be served be commuted to probation order considering the rehabilitation undergone by the applicant.

iii) That the Applicant be exempted from paying costs as he is a pauper.

**3.** The application is based on the grounds on the face thereof and supported by his affidavit. The gist of the application is that the Applicant was charged with the offence of Robbery with violence contrary to Section 295 as read with **Section 296(2)** of the **Penal Code** vide *Criminal Case No 804 of 2013* and he was sentenced to suffer death on 18/8/2014. He appealed to the High Court vide *Criminal Appeal No. 70 of 2014* but the same was dismissed. His second appeal to the Court of Appeal, *Criminal Appeal No. 98 of 2015* succeeded partially on sentence, where sentence was reviewed to thirty years imprisonment.

**4.** In response, 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. That the application is an abuse of the court process and should accordingly be dismissed.

5. The preliminary objection was canvassed by way of written submissions.

6. For the Respondent, it is urged that under **Article 165(6)** of the **Constitution**, the high court has supervisory jurisdiction over subordinate courts and over any person, body or authority exercising judicial or quasi-judicial function, “but not over superior court.” 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 both 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.

**7.** Despite an opportunity to file submissions on the preliminary objection with extension of time for 30 days on 18.9.25, the Applicant did not file such submissions. What I find on record are submissions in respect of the merits of the application which do not address the question of jurisdiction.

**8.** The Applicant has moved this Court seeking orders whose effect is to challenge, overturn, vary, or interrogate a decision rendered by a court of concurrent jurisdiction and of a superior court.

◀ **9.** The application has been opposed through a preliminary objection on jurisdiction.

**10.** Issue for determination is whether this Court has jurisdiction to entertain the application as framed.

**11.** It is settled law that jurisdiction is everything, and without it, a court must down its tools. This principle was authoritatively stated in **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1.**

**12.** The jurisdiction of the High Court is derived from the Constitution and statute. Article 165 of the Constitution confers jurisdiction upon the High Court but also places express limitations thereon.

**13.** In particular, **Article 165(5)** removes the High Court’s jurisdiction over matters reserved for the Supreme Court or falling within the jurisdiction of courts of equal status; and

**Article 165(6)** limits the High Court’s supervisory jurisdiction to subordinate courts and bodies exercising quasi-judicial authority, expressly excluding superior courts.

**14.** In criminal matters, the High Court’s revisionary jurisdiction under **Sections 362-364 of the Criminal Procedure Code** is similarly confined to proceedings of

subordinate courts only. It does not extend to decisions of courts of equal or superior jurisdiction.

**15.** The Supreme Court in **Republic v Karisa Chengo & 2 Others [2017] eKLR** emphatically affirmed that courts of equal status cannot supervise, review, or sit on appeal over one another. Likewise, the Court of Appeal in **Eliud Wafula Maelo v Republic [2019] eKLR** reaffirmed that the High Court cannot exercise appellate or revisionary jurisdiction over decisions of a court of concurrent or superior jurisdiction.

**16.** From the pleadings and prayers sought, it is evident that the Applicant is dissatisfied with a decision rendered by a court of superior jurisdiction, the Court of Appeal. The reliefs sought would require this Court to re-evaluate that decision, interrogate its correctness, and effectively sit on appeal over it.

**17.** That invitation cannot be accepted. To do so would be to usurp jurisdiction not donated by the Constitution or statute contrary to the holding of the Supreme Court in

**Samuel Kamau Macharia & Another v Kenya Commercial Bank Ltd & 2 Others [2012] eKLR.**

**18.** This Court cannot, under the guise of a criminal revision, constitutional petition, or miscellaneous application, exercise appellate authority where none exists. The proper recourse for the Applicant lies only through the lawfully prescribed appellate process, if any, or through the remission provisions in the Prisons Act or through exercise by the president of the power of mercy and not before this Court.

**19.** In light of the foregoing, this Court finds that it lacks jurisdiction to entertain the present application.

**20.** Accordingly, the application is hereby dismissed for want of jurisdiction.

**Dated signed and delivered virtually this 14<sup>th</sup> day of January, 2026.**

**A.K. NDUNG’U**

**JUDGE**

FINAL RULING