

REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL PETITION E006 OF 2025

MICHAEL MACHARIA KIRIGO
APPLICANT

VERSUS

THE REPUBLIC
RESPONDENT

RULING

1. The petition does not relate to sentencing. The application to a challenge to the Court of Appeal decision dated 9/5/2025 in COA CRA 155 of 2018. The court substituted the sentence with 30 years' imprisonment. The matter raised before the court relates to the conviction. This has been dealt with by a court of a higher rank than mine.
2. Article 164 of the Constitution places appeals from this court to the Court of Appeal. There is no provision for appeals from the Court of Appeal to this court. the said Article provides as follows:
 - (1) There is established the Court of Appeal, which-
 - (a) shall consist of the number of judges, being not fewer than twelve, as may be prescribed by an Act of Parliament; and

(b) shall be organised and administered in the manner prescribed by an Act of Parliament.

(2) There shall be a president of the Court of Appeal who shall be elected by the judges of the Court of Appeal from among themselves.

(3) The Court of Appeal has jurisdiction to hear appeals from—

(a) the High Court; and

(b) any other court or tribunal as prescribed by an Act of Parliament.

3. This Court cannot therefore assume jurisdiction set out in Article 163 of the Constitution to hear an appeal from the decision of the Court of Appeal. The appellant ought to have moved the Supreme Court so that regard will be had as in the case of **Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others** (Amicus Curiae) [2024] KESC 34 (KLR). I shall not comment any further than this in view of the doctrine of stare decisis. In the case of **Heritage Insurance Company Limited v Angatia & 3 others [2024] KECA 1458 (KLR)**, the Supreme Court held as follows:

Having come to this conclusion, it automatically follows that the subsequent suit was an abuse of the court, and the trial court ought to have so found. The complaint by the respondent that upholding the

doctrines of res judicata and stare decisis would amount to impugning on their right to access justice as provided for under Articles 48 and 50 of the Constitution is neither here nor there. Access to justice has rules of engagement. Parties accessing justice must agree to play by the said rules. res judicata and stare decisis are some of the rules of the game. If they are engaged in proper cases as here, the affected party cannot run to the Constitution, pleading denial of access to justice and or denial of a fair hearing.

4. The court's jurisdiction is circumscribed under Article 165(6) of the Constitution:

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.

5. This court cannot, therefore, assume jurisdiction it does not have. In the case of **Macharia & another v Kenya Commercial Bank Ltd & 2 others** [2012] KESC 8 (KLR), the supreme court stated as doth: -

This Court dealt with the question of jurisdiction extensively in, *In the Matter of the Interim Independent Electoral Commission (Applicant)*, Constitutional Application Number 2 of 2011. Where

the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

6. What then is the duty of the court when a matter comes to a court where the decision challenged is a court of appeal decision? Luckily, Nyarangi JA, had foresight, in the case of **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd** [1989] eKLR as follows:

“With that I return to the issue of jurisdiction and to the words of Section 20 (2) (m) of the 1981 Act. I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no

basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage which will show that what

I have already said is consistent with authority: "By jurisdiction is meant the authority which a court as to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics.

7. The jurisdiction of any adjudicating tribunal consists mainly of 4 elements:

- a) Jurisdiction Ratione Materiae
- b) Jurisdiction ratione temporis
- c) Jurisdiction ratione personae

d) Jurisdiction *ratione loci*

8. The jurisdiction *Ratione Materiae* covers the subject matter. In **Sheila Munubi v Adah Onyango & another** [2021] KEELRC 481 (KLR), Rika J addressed the question of jurisdiction as follows:

20. On jurisdiction, a Court must always be satisfied that it has the subject matter jurisdiction [jurisdiction *ratione materiae*], personal jurisdiction [jurisdiction *ratione personae*], and temporal jurisdiction [jurisdiction *ratione temporis*] to proceed with any Claim or Petition.

9. The subject matter herein is the power to determine a matter already determined by the Court of Appeal. In this case, the court has no jurisdiction to hear and determine the prayers sought. An application made without jurisdiction is a nullity. In **Macfoy vs. United Africa Co. Ltd [1961] 3 All E.R. 1169**, Lord Denning delivering the opinion of the Privy Council at page 1172 (1) said;

If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put

something on nothing and expect it to stay there. It will collapse.”

10. The Petitioner must learn to live with the consequences of his decisions. The court must down its tools.

Determination

11. in the upshot, I make the following orders:
 - a. I therefore, *suo moto*, that the court lacks jurisdiction to hear and determine a matter already dealt with by the court of appeal
 - b. The Application dated 18.08.2025 is hereby struck out.
 - c. The file is closed.

DELIVERED, DATED and SIGNED at **Nyeri**, virtually on this **19th** day of **January, 2026**. Judgment delivered through Microsoft Teams Online Platform.

KIZITO MAGARE
JUDGE

In the presence of: -

Pro se Appellant

Ms Kaniu for the Respondent

Court Assistant - Michael

ORIGINAL