Wanyama v Chief Justice of Kenya & 4 others; Director of Public Prosecution & another (Interested Parties) (Petition E064 of 2024) [2026] KEHC 529 (KLR) (Constitutional and Human Rights) (29 January 2026) (Ruling)

Neutral citation: [2026] KEHC 529 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CONSTITUTIONAL AND HUMAN RIGHTS

PETITION E064 OF 2024

LN MUGAMBI, J

JANUARY 29, 2026

BETWEEN

FRANK LAWRENCE WANYAMA ..... PETITIONER

AND

CHIEF JUSTICE OF KENYA ..... 1ST RESPONDENT

PRESIDENT OF THE COURT OF APPEAL ..... 2ND RESPONDENT

PRESIDING JUDGE, MILIMANI HIGH COURT CRIMINAL DIVISION ..... 3RD RESPONDENT

CHIEF MAGISTRATES COURT, MILIMANI LAW COURTS 4TH RESPONDENT

ATTORNEY GENERAL ..... 5TH RESPONDENT

AND

DIRECTOR OF PUBLIC PROSECUTION ..... INTERESTED PARTY

ALEX MAHAGA OLABA ..... INTERESTED PARTY

RULING

Introduction

1. The 1st to 4th Respondents filed a Notice Preliminary Objection dated 18th June 2024 against the instant Petition dated 5th February 2024.

2. The grounds of the Preliminary Objection are:

i. The Petition herein raises issues pending hearing and determination in the Court of Appeal at Nairobi in Criminal Appeal No. E012 of 2024 - Frank Lawrence Wanyama and Alex Mahaga Olaba vs The Republic because the Petition seeks to nullify the retrial proceedings in the Magistrates Court in MCSO No. 27 of 2020 - Frank Lawrence Wanyama and Alex Mahaga Olaba vs The Republic which commenced pursuant to the Judgment in HCCRA No. 183 of 2019 consolidated with HCCRA No. 184 of 2019 - Frank Lawrence Wanyama and Alex Mahaga Olaba Vs The Republic which is pending appeal in COACRA No. E012 of 2024.

ii. The Petition is an attempt to invite this Court to review the decision of the High Court Criminal Division which is unprocedural and improper because the High Court lacks supervisory jurisdiction over other Courts of concurrent and parallel jurisdiction.

iii. This Court lacks jurisdiction to entertain, hear or determine the Petition herein by virtue of the doctrine of sub-judice under Section 6 of the *Civil Procedure Act*.

iv. Additionally, the Petition is a cloaked and disguised appeal against the Judgment dated 8th August 2019 in MCSO No.10 of 2018 and the Orders dated 26th March 2021, 10th May 2021 and 11th June 2021 in MCSO No. 27 of 2020.

v. In view of the foregoing, the Petition herein is frivolous, vexatious, premature, defective, bad in law and an abuse of court process.

1st to 4th Respondents' Submissions

3. The 1st and 4th Respondents in support of its case by its written submissions dated 23rd January 2025 filed by Muma and Kanjama Advocates.

4. Counsel submitted that the Preliminary Objection is hinged on this Court's absence of jurisdiction to hear this matter, a foundational issue, which he argued ought to be disposed first as was held in Owners of Motor Vessel Lillian S. v. Caltex Kenya Ltd (1989) KLR and also in the cases of Benson Ambuti Adega & 2 others v Kibos Distillers Ltd & 25 others (2020) eKLR and R. v Karisa Chengo [2017]eKLR.

5. It was contended that the Petition raises issues pending hearing and determination before the Court of Appeal being Criminal Appeal No. E012 of 2024 wherein the Petitioner is appealing against the decisions delivered in HCCRA No.183 of 2019 consolidated with HCCRA No.184 of 2019 and in MSCO No.10 of 2018. It was further pointed out that the issues in the Memorandum of Appeal are the same issues raised in the instant Petition hence offends the doctrine of sub judice. Reliance was placed in Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) [2020] eKLR as well as Republic v Paul Kihara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya [2020] eKLR, Joel Kenduiywo v District Criminal Investigation Officer Nandi & 4 others [2019] eKLR, Ndii & others v Attorney General & others (Petition E282, 397, E400, E401, E416 & E426 of 2020 & 2 of 2021 (Consolidated)) [2021) KEHC 9746 (KLR) and Kenya Bankers Association v Kenya Revenue Authority [2019] eKLR.

6. Moreover, Counsel submitted that the Petition is a disguised invitation to this Court to review the decision of the High Court (Criminal Division) which hence unlawful for this Court has no supervisory jurisdiction over other Courts of concurrent jurisdiction.

7. Counsel submitted that the Petition seeks to nullify the Judgment in HCCRA No. 183 and 184 of 2019 which decision was reached by the High Court while exercising its appellate jurisdiction

in accordance with Article 165(3)(e) of *the Constitution* as read with Section 5 of the *High Court (Organization and Administration) Act*. On this premise, Counsel submitted that the jurisdiction of this Court had been invoked improperly.

8. Moreover, Counsel submitted that the Petition is a cloaked appeal against the Judgment in MCSO No. 10 of 2018 and the Orders issued on 26th March 2021, 10th May 2021 and 11th June 2021 in MCSO No. 27 of 2020. Counsel noted that these facts as restated in the submissions are uncontested by the Petitioner and thus evident that the Petition is frivolous, vexatious, defective, bad in law and an abuse of Court process.

Petitioner's Submissions

9. Bowry and Company Advocates for the Petitioner's filed submissions dated 28th July 2025. On the onset, Counsel noted that the principles of preliminary objections were set out in Mukisa Biscuit Manufacturing Co. Ltd Vs West End Distributors Limited [1969] EA (696) as follows:

> " A preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit"

10. Equal dependence was placed in Hassan Ali Joho & Another Vs Suleiman Said Shahbal & 2 Others (2014] eKLR and Oraro Vs. Mbaja [2005] KEHC 3182 (KLR).

11. Counsel submitted that the 1st to 4th Respondents' Notice of Preliminary Objection is not merited and further does not meet the threshold for a preliminary objection.

12. Counsel submitted that the existence of Court of Appeal Criminal Appeal No. E012 of 2024 is a matter of factual dispute, as the Petitioner challenges the suspicious circumstances surrounding its sudden emergence. Counsel informed that the Petitioner had denied on oath, filing the alleged Court of Appeal matter and is also unaware of it.

13. Counsel noted that Petitioner is particularly concerned about the filing of a purported Record of Appeal dated 28th February 2024, after the filing of the present Petition, yet the Judiciary Ombudsman confirmed in an email dated 30th August 2022 that there was tampering with the original court record of High Court Criminal Application No. 184 of 2019, a central issue raised in this Petition.

14. As such, Counsel submitted that this issue can only be determined through adducing of evidence. Counsel also stressed that contrary to the Respondents allegations the issues raised in this Petition are not the subject of any pending proceedings before any Court.

15. Counsel added that in any event, the doctrine of sub judice must be established from the pleadings. In this matter, Counsel submitted that the Petition makes no reference to the alleged Criminal Appeal No. E012 of 2024 thus this Court cannot proceed with this issue any further. Reliance was placed in Akwaka & Another V Political Parties Dispute Tribunal & 5 Others [2023] KEHC 24749 (KLR) where it was held that:

> " Immediately the 2nd to 4th Respondents found themselves referring to annextures, cases and dates they ought to have known that they have crossed the Rubicon; subjudice is obtained from pleadings. The court must make a factual finding to be able to find that a matter is subjudice. As matters standard, there is no law establishing HCCA E630 OF 2023. The court has no duty to peruse anything more than the memorandum of appeal. In the memorandum of Appeal, HCCA E630 OF 2023 is not pleaded."

16. Comparable reliance was placed in Kenya National Commission on Human Rights (supra), Caledonia Supermarkets Limited V Anastacia Wagiciengo & Another [2019] eKLR and Henry Wanyama Khaemba v Standard Chartered Bank(K) LTD & another [2014] KEHC 4804 (KLR).

17. On the allegation that this Petition is a disguised appeal, Counsel submitted that, it is unfounded. This is since the Petitioner had already appealed against the decision in MSCO No.10 of 2018 in High Court Criminal Application No.184 of 2019.It is noted that the Petitioner further sought to appeal the High Court decision however the same has been frustrated due to the tampering with the Court file which has ultimately impeded the appellate process and the reason why this Petition is before this Court. Counsel submitted that the High Court has the inherent jurisdiction to prevent abuse of its process, ensure fairness and justice in legal proceedings and preserve the integrity of the judicial process.

18. Dependence was placed in Rev. Madara Evans Okanga Dondo Vs. Housing Finance Comp Any of Kenya Nakuru HCCC No. 262 of 2005 where it was held that:

> " The court will always invoke its inherent jurisdiction to prevent the abuse of the due process of the court. The jurisdiction of the court, which is comprised within the term "inherent", is that which enables it to fulfil itself, properly and effectively, as a court of law. The overriding feature of the inherent jurisdiction of the court is that it is part of procedural law, both civil and criminal, and not part of the substantive law; it is exercisable by summary process, without plenary trial, it may be invoked not only in relation to the parties in pending proceedings, but in relation to anyone, whether a party or not, and in relation to matters not raised in litigation between the parties; it must be distinguished from the exercise of judicial discretion; it may be exercised even in circumstances governed by rules of the court. The inherent jurisdiction of the court enables the court to exercise control over process by regulating its proceedings. by preventing the abuse of the process and by compelling the observance of the process. In sum, it may be said that the inherent jurisdiction of the court is virile and viable doctrine and has been defined as being the reserve or fund of powers, a residual source of powers. which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law. to prevent improper vexation or oppression. to do justice between the parties and to secure a fair trial between them."

19. Similar reliance was placed on Charles (Suing as The Legal Representative of Abraham Kailemia Ikigu (Deceased) V Kirimania (Sued As The Legal Representative Of The Estate Of The Late Doris Kinanu Kirimania (Deceased)) [2025] KECA 950 (KLR).

20. On the allegation that the Petition is an attempt to invite the Court to review the decision of the High Court (Criminal Division), Counsel submitted that the Petition does not seek to invoke this Court's supervisory jurisdiction but rather seeks a declaration that the handling of the Court file in the High Court (Criminal Division) was fundamentally flawed and tainted, rendering a fair hearing as guaranteed in *the Constitution*, impossible.

21. Counsel equally argued that the Petition raises serious concerns about the abuse of the criminal process by the 1st to 4th Respondents necessitating this Court's intervention. Counsel argued thus that no adequate remedy lies in the ordinary criminal appellate or review process, as the defects in the handling of the case file and institutional misconduct complained of goes beyond mere procedural irregularities but rather strikes at the heart of constitutional integrity and judicial impartiality thus this Court is an appropriate forum.

22. In light of the foregoing, Counsel argued that the Petition is not frivolous, vexatious, premature, defective, bad in law and an abuse of the Court process as alleged. Counsel submitted on the flipside that the Preliminary Objection is misconceived, premature and abuse of the Court process as is an attempt to circumvent the hearing of the Petitioner's legitimate grievances.

Others Parties' Case

23. The other parties' responses and submissions are not in the Court file or Court Online Platform (CTS).

Analysis and Determination

24. It is my considered opinion that the single issue that arises for determination is:

> Whether the 1st to 4th Respondents' Preliminary Objection is merited.

25. The threshold of a Preliminary Objection was summarized in Mukisa Biscuit Manufacturers Ltd -vs- Westend Distributors Ltd, (1969) EA 696 page 700 when the Court held as follows: -

> 'So far as I am aware, a preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary objection may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract-giving rise to the suit, to refer the dispute to arbitration.
>
> A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law, which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and, on occasion, confuse the issues, and this improper practice should stop.'

26. Likewise, the Court in Dismas Wambola v Cabinet Secretary, Treasury & 5 others [2017] KEHC 8777 (KLR) observed as follows:

> " ...a preliminary objection may only be raised on a "pure question of law." To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.
>
> In law, a question of law, also known as a point of law, is a question that must be answered by applying relevant legal principles to interpretation of the law. Such a question is distinct from a question of fact, which must be answered by reference to facts and evidence as well as inferences arising from those facts."

27. Furthermore, this Court in Nthia v Kenyatta University [2025] KEHC 13220 (KLR) held as follows:

> " 24. Going by the case law on what a Preliminary Objection entails, one deduces that a proper Preliminary Objection is identifiable by depiction of the following four major characteristics:
>
> i. Must be on a pure point of law and not a contest of facts;
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> ii. it is argued on assumption that what is pleaded by the opposite side is correct;

iii. cannot be raised if any fact has to be ascertained by evidence or if what is sought is an exercise of judicial discretion;

iv. If successful, it must be capable of disposing of the entire suit."

28. The instant Notice of Preliminary Objection is founded on the principle of sub judice. Section 6 of the *Civil Procedure Act* provides:

> " No Court shall proceed with the trial of any suit or proceeding on in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties or between parties under whom they or any of them claim litigating under the same title, where such or proceedings is pending in the same or any other Court having jurisdiction in Kenya to grant the relief claimed."

29. The Supreme Court in Kenya National Commission on Human Rights (supra) had the occasion to pronounce itself on the subject of sub judice as follows:

> "(67) The term 'sub-judice' is defined in Black's Law Dictionary 9th Edition as: "Before the Court or Judge for determination." The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives."

30. Delving into the intricacies of this principle the Court in Kenya Bankers Association (supra) observed as follows:

> " 30. The basic purpose and the underlying object of Section 6 is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject matter and the same relief. This is to pin down the parties to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to prevent multiplicity of proceedings...
>
> 33. For section 6 to come into play, the matter in issue in both the suit has to be directly and substantially in issue in the previous. The court may in proper cases invoke its inherent jurisdiction to make such orders as may be necessary for the ends of justice or to prevent abuse of its process. This may be done where the tests of sub judice apply. As was held by the High Court of Uganda in Nyanza Garage vs. Attorney General:-
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> "In the interest of parties and the system of administration of justice, multiplicity of suits between the same parties and over the same subject matter

is to be avoided. It is in the interest of the parties because the parties are kept at a minimum both in terms of time and money spent on a matter that could be resolved in one suit. Secondly, a multiplicity of suits clogs the wheels of justice, holding up resources that would be available to fresh matters, and creating and or adding to the backlog of cases courts have to deal with. Parties would be well advised to avoid a multiplicity of suits."

34. For the doctrine of sub judice to apply the following principles ought to be present:-

(a) There must exist two or more suits filed consecutively;

(b) The matter in issue in the suits or proceedings must be directly and substantially the same, the parties in the suits or proceedings must be the same or must be parties under whom they or any of them claim and they must be litigating under the same title, the suits must be pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed."

31. The 1st to 4th Respondents' Preliminary Objection in this matter revolves around a challenge to this Court's jurisdiction on three main fronts. First, that it is sub judice on the basis of the alleged Criminal Appeal No. E012 of 2024 before the Court of Appeal. Second, that the Petition is an attempt to review the High Court (Criminal Division) decision and third a disguised appeal clothed as a Constitutional Petition. A jurisdictional question is a pure point of law as its effect, if established bars the Court from dealing with the matter.

32. As was observed by the Court of Appeal in Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service [2019] KECA 767 (KLR);

> "Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. If a suit is filed without jurisdiction, the only remedy is to withdraw it and file a compliant one in the court seized of jurisdiction. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied. Without jurisdiction, the Court cannot confer jurisdiction to itself..."

33. The 1st to 4th Respondents' allege that the Petitioner's appeal against the High Court decision in High Court Criminal Application No.184 of 2019 flowing from MSCO No.10 of 2018 is pending before the Court of Appeal. The Petitioner rebutted this claim stating that he is a stranger to the alleged appeal and perplexed at the sudden emergence of the said Appeal. This is since, he has never been able to file one owing to the compromised High Court matter.

34. For context, the Petitioner was charged with the offence of gang rape in Chief Magistrates Sexual Offences Case No.10 of 2018 wherein he was convicted. He appealed his conviction and sentence in the High Court in Criminal Appeal No. 184 of 2019. He asserts that the High Court in its Judgement dated 30th June 2020, declared the matter a mistrial and ordered that the Petitioner be tried a fresh.

35. It was noted that the trial Court in the re-trial, convicted him on unsworn evidence. The Petitioner argues that his attempt to appeal the matter has been frustrated, as he has not been able to access typed and certified copies of proceedings from the Court.

36. Moreover, he argues that despite filing a Notice of Appeal on 13th July 2020, the Record of Appeal is yet to be prepared by the High Court. In sum, the Petitioner asserts that his pursuit to get justice

has been curtailed by the High Court and subordinate Court. Accordingly, the Petitioner seeks the following reliefs against the Respondents:

a. This Court be pleased to permanently stay the proceedings in Nairobi Chief Magistrates Sexual Offences Case Number 27 of 2020 in the interest of administration of justice, public interest and to avoid further abuse of the legal process by various arms of the Judiciary.

b. A declaration that the proceedings in Milimani Chief Magistrates Sexual Offences Case Number 27 of 2020 are an abuse of the process of the court and therefore null and void and have been rendered nugatory as a result of judicial impropriety at the Magistrates Court, High Court and Court of Appeal.

c. A declaration that on account of the inefficiency and inability of the High Court, to prepare a Record of Appeal as by law required it is now impossible for the Petitioner to prosecute his intended Appeal against the Judgement of the High Court in Criminal Appeal Number 183 of 2019.

d. A declaration that the Notice of Appeal filed by the Petitioner on 13th July, 2020 has been rendered nugatory.

e. A declaration that the inefficiency, negligence and disorganization of High Court of Kenya and the administrative staff thereof has resulted in the violation of the fundamental rights and freedoms of the Petitioner guaranteed under Articles 50 (2)(a), (d), (e) and (q) of *the Constitution* of Kenya.

f. A declaration that the conduct and inefficiency of the Trial Magistrate's conduct in Magistrates Sexual Offences Case Number 10 of 2018 has resulted in the violation of the Petitioner's fundamental rights and freedoms as guaranteed under Articles 50 (1), (2) (a) and (o) of *the Constitution* of Kenya.

g. A declaration that the Trial Magistrate's conduct in Sexual Offences Case Number 27 of 2020 has resulted in the violation of the Petitioner's fundamental rights and freedoms as guaranteed under Articles 50 (1), 50 (2) (a), and 50 (2) (o) of *the Constitution* of Kenya.

h. This Court be pleased to direct that an investigation be conducted into the tampering of the Court file in respect of High Court Criminal Appeal Number 183 of 2019 to determine the nature and extent of the tampering and to take such necessary action against the persons found culpable.

i. Any other orders that this Court shall deem fit and just to grant.

37. As guided in the cited authorities, a preliminary objection must be on a pure point of law, in that the Court is only required to refer to the law to make a determination. In essence, it must be capable of disposing of a dispute at once and not raise factual issues that require submission of evidence or touch on contested issues.

38. In my considered view, the 1st to 4th Respondents' Preliminary Objection in the first issue, raises the issue of the existence of an Appeal before the Court of Appeal filed by the Petitioner. In my view, this touches on issues that are contested, meaning the facts are not deemed to be agreed upon by the parties. This begs the question therefore whether the preliminary objection is a pure point of law albeit attacking this Court's jurisdiction.

39. In my humble view, this issue does not raise a pure point of law and thus fails to meet the threshold set for preliminary objections. I say so because, to ascertain the 1st to 4th Respondents' allegations,

the Court must interrogate the factual issues and evidence. The existence of these elements in essence affects the substance of this point making it untenable as a preliminary objection. The sub judice issue is thus rejected.

40. The second and third issue challenges this Court's jurisdiction. This objection was raised by the 1st to 4th Respondents' in the context that the Petitioner filed the instant Petition seeking a review of the High Court Orders and equally disguises it as an appeal at the same time. This was objected to as the High Court has no supervisory jurisdiction over Courts of parallel or equal jurisdiction.

41. The Petitioner on the other hand, opposed this argument arguing that this Court was his only option in his pursuit of justice. This is because he is unable to seek a review or an appeal owing to the compromised nature of the High Court matter. As such, he argued that the High Court has the inherent jurisdiction to preserve the integrity of the judicial process.

42. A look at the Petition discloses that it revolves around the Petitioner's grievance that his pursuit for justice and access to a fair trial before the High Court and trial Court has been frustrated by the inability to appeal his case before the Court of Appeal. As such, in the remedies, he seeks orders against both the Trial Court and the High Court.

43. Apparently, the High Court (Criminal Division) handled the matter and rendered its decision. This Court, is also High Court, even though sitting in a different division, that is, the Constitutional and Human Rights Division. Under Article 165 (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.

44. Consequently, since the Petitioner's matter was determined at the High Court, it follows that this Court lacks jurisdiction to entertain this matter.

45. This is because this Court being also a High Court, cannot supervise, review, direct or interfere with the decision of another High Court division, as all are Courts of concurrent and coordinate jurisdiction under Article 165 of *the Constitution*.

46. In my considered view, the Petitioner's recourse, if dissatisfied, lies not in filing a direct or fresh suit before this Court, but by applying for a review before the same Court or appealing to the Court of Appeal. Courts are the guardians of *the Constitution* but are also bound by the same Constitution in equal measure. The law contemplates that they are not infallible, they too can make mistakes, hence has provided mechanisms for the correction either through appeal or review. These mechanisms should be pursued rather than pitting one High Court against another High Court. A High Court has no jurisdiction to issue a declaratory relief against the decision of another High Court or a superior Court of record for alleged violation of fundamental rights.

47. In the Indian case of Naresh Shridner Mirajkar vs State of Mahashtra (1967) AIR 1967 SCI the Supreme Court of India, by majority decision of 7-2; held that the Supreme Court cannot issue writs under Article 32 to quash High Court judicial order (even if erroneous) because High Courts are superior courts of record (Article 215) hence their orders are only amenable to appeal, not writ jurisdiction and that to do so would destroy the finality of judicial decision and flood the Court.

48. The Court reasoned:

> "... Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes the matter up before the appellate Court... We are, therefore, satisfied that so far as the jurisdiction of this Court to issue writs of

certiorari is concerned, it is impossible to accept the argument of the petitioners that judicial orders passed by High Courts in or in relation to proceedings pending before them, are amenable to be corrected by exercise of the said jurisdiction. We have no doubt that it would be unreasonable to attempt to rationalise the assumption of jurisdiction by this Court under Art. 32 to correct such judicial orders on the fanciful hypothesis that High Courts may pass extravagant orders in or in relation to matters pending before them and that a remedy by way of a writ of certiorari should, therefore, be sought for and be deemed to be included within the scope of Art. 32. The words used in Art. 32 are no doubt wide; but having regard to the considerations which we have set out in the course of this judgment, we are satisfied that the impugned order cannot be brought within the scope of this Court's jurisdiction to issue a writ of certiorari under Art. 32; to hold otherwise would be repugnant to the well-recognised limitations within which the jurisdiction to issue writs of certiorari can be exercised and inconsistent with the uniform trend of this Court's decisions in relation to the said point..."

49. The Supreme Court of India guided by the above precedent in in Writ Petition(s)(Criminal) No(s). 75/2024 Ganpat Ganatpat Petitioner(s) Versus State Of Uttar Pradesh Respondent(s) has further held that a writ Petition alleging violation of fundamental rights by reason of delay in the hearing a pending criminal appeal is untenable because judicial delay by a competent court is a matter forms part of that judicial proceeding which cannot be challenged by a separate writ Petition alleging breach of Article 21 (right to speedy trial or liberty), instead, the litigant should have recourse to specific remedies within the same framework.

50. The bench of Justices Dipankar Datta and Augustine George Masih held:

> "... It has been highlighted there that in our constitutional scheme there is a clear division of jurisdiction between the two institutions and both the institutions need to have mutual respect for each other. Accepting the prayer of the petitioner and issuing any direction, as prayed, would amount to inappropriate exercise of discretionary jurisdiction showing disrespect to another constitutional court; hence, no such direction, as prayed by the petitioner, can be issued.
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> 3. That apart, assuming that an extraordinary case requires a nudge from this Court for early hearing of a long pending criminal appeal, it is only a request that ought to be made to the High Court to such effect in appropriate proceedings, care being taken to ensure that the proceeding before this Court is otherwise maintainable. Bearing in mind *the Constitution* Bench decision in Naresh Shridhar Mirajkar Vs. State of Maharashtra AIR 1967 SCI which has laid down the law more than half a century back that a judicial decision rendered by a Judge of competent jurisdiction in or in relation to a matter brought before him does not infringe a Fundamental Right, we are of the clear view that the instant writ petition (presented by the petitioner aggrieved by non-consideration and non-disposal of his criminal appeal) is not maintainable. If priority has not been given to the petitioner's criminal appeal (albeit filed in 2016) by the High Court for early hearing, for whatever reason, the same is also part of the judicial process and cannot be made amenable to a challenge in a writ petition under Article 32 citing breach of Article 21."

51. The foregoing decisions affirm and uphold the constitutional scheme that safeguards judicial comity by preventing needless conflicts among courts. This Court cannot be misled to entertain a flawed Petition that manifestly seeks to disrupt the foundational principles of judicial comity.

52. The upshot therefore is that this Court lacks jurisdiction to entertain this matter. The Petition is struck out with costs to the Respondents.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29TH JANUARY, 2026.

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L N MUGAMBI

JUDGE