

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT GARISSA
CONSTITUTIONAL PETITION NO. E004 OF 2025
IN THE MATTER OF (SUPERVISORY JURISDICTION AND
PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS) OF
THE CONSTITUTION OF KENYA

BETWEEN

ABDIRAHMAN MOHAMED HAJIR.....
....PETITIONER

VS

THE COURT OF APPEAL.....1ST
RESPONDENT

REPUBLIC.....2ND
RESPONDENT

JUDGMENT

1. The petitioner moved this court via a petition dated 14.10.2025 seeking for the following declarations:
 - i. **That the imposed death sentence be substituted with a 25-year imprisonment and the sentence runs from the date of arrest pursuant to articles 2,25,26,27 and 28 of the constitution as read with articles 14 and 26 of the International Covenant on Civil and Political Rights (ICCPR) in recognition of the fundamental rights and freedoms of the petitioner.**
 - ii. **That this petition has merit pursuant to the rehabilitation report emerging from prison authorities as stated in the attached recommendation letters in respect to the petitioner herein.**

iii. Any other relief that the Honourable Court may deem fit and just to grant in the interest of justice.

2. The central issue before this Honourable Court is that, pursuant to Articles 23 and 165 of the Constitution, the Court possesses jurisdiction to adjudicate matters concerning violations of fundamental rights. That in exercise of this mandate, the Court ought to set aside the judgment of the 1st respondent and substitute the sentence of death with a custodial term not exceeding twenty-five (25) years. That the said term to run from the date of arrest.
3. In support of his petition, the petitioner deposed that he is an Ethiopian national who was charged with the offence of murder and consequently sentenced to death. He averred that he has since exhausted his first appeal, wherein the 1st respondent upheld the decision of the High Court. He further stated that his subsequent applications for review and resentencing have been unsuccessful, the same having been dismissed on the basis of the 1st respondent's reasoning that he was undeserving of leniency.
4. Undeterred, he has since moved this court to summon the 1st respondent to explain whether its verdict was in consonance with the provisions of articles 2,25,26,27 and 28 of the constitution. He urged this court to find that the finding by the 1st respondent was contra the provisions of the aforementioned articles. To buttress his argument, he relied on the cases of **SKN vs Republic, Criminal Appeal No. 18 of 2019 [2024] KECA 498 (KLR)** and **Evans Nyamari Ayako vs Republic, Kisumu**

Criminal Appeal No. 22 of 2018 where the Court of Appeal considered a broad spectrum survey in various courts worldwide.

5. He placed further reliance on the case of **Ali Abdalla Mwanza vs Republic, Criminal Appeal No. 259 of 2012** where it was held that a 40-year term is equal to life sentence.
6. That in view of the fact that the petitioner is approaching his expected life expectancy, this Honourable Court should be pleased to summon the 1st respondent to show cause why his sentence should not to be reviewed. It is worth nothing that the 1st respondent did not respond.
7. The 2nd respondent, through submissions dated 02.12.2025 urged that the petitioner was charged with the offence of murder, duly convicted and sentenced to death. It was further submitted that the petitioner lodged an appeal before the Court of Appeal in Nairobi challenging both conviction and sentence, but the same was dismissed, after the court upheld the findings and determination of the High Court.
8. It was submitted that the petitioner had the opportunity, during proceedings before the High Court, to raise issues relating to alleged violations of his rights. The High Court, having duly considered the petitioner's submissions, nonetheless convicted him of the offence of murder and sentenced him to death.
9. It was further averred that, as the trial court, the High Court had the mandate to evaluate the evidence presented and arrive at its own conclusion, which it did. Consequently, it was contended that

this Court is now *functus officio*, having already exercised its jurisdiction in respect of the matter and therefore, cannot reopen or re-litigate issues that were conclusively determined. To that end, reliance was placed on the case of **Kabansora Millers Ltd vs Nyangena [2025] KEHC (KLR)** where the court held that:

“The functus officio principle serves to ensure finality in judicial decisions and prohibits courts from revisiting matters already conclusively determined except where expressly permitted by law. It promotes judicial efficiency, certainty and the integrity of the judicial process”.

10. Additionally, reliance was placed on the case of **Muruatetu & Ano vs Republic; Katiba Instaitute & 5 Others (Amicii Curiae [2017] KESC 2 (KLR))** at para 69 where the court stated that:

“For avoidance of doubt, this decision does not outlaw the death penalty, which is still applicable as a discretionary maximum punishment.”

11. To that end, this court was urged to dismiss the petition herein and be guided by the finding of the Supreme Court that death penalty meted against the petitioner is lawful.
12. I have considered the petition and submissions by both parties. The main issue for determination is whether this court is possessed of the jurisdiction to issue the orders sought?
13. It is a settled principle of law that this Honourable Court may only exercise jurisdiction as conferred upon it by the Constitution, statute, or both. A court cannot assume jurisdiction that has not

been granted by law, nor may it exceed the limits of the jurisdiction so conferred. In the case of **Samuel Kamau Macharia & another vs 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”.

14. This Honourable Court derives its jurisdiction principally from Article 165(3) of the Constitution, which vests in it unlimited original jurisdiction in both criminal and civil matters. Article 165 clearly delineates the scope of this Court’s authority, setting out what it may and may not do. Included within this jurisdiction are supervisory powers over subordinate courts and tribunals. However, by virtue of Article 165(6), this Court is expressly precluded from exercising supervisory jurisdiction over superior courts. Accordingly, while the Court is empowered to intervene in matters impacting on fundamental rights and freedoms, it must do so strictly within the bounds of jurisdiction conferred by the

Constitution and statute. Article 165(6) of the constitution provides that:

“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.”

15. After his unsuccessful appeal to the Court of Appeal, the petitioner now seeks that the Court reviews the decision of its superiors. By dint of Article 165(6) therefore, this Court lacks the jurisdiction to reopen the matter to relook at his sentence that has since been upheld by the Court of Appeal.
16. In the same breadth, the Supreme Court in the case of **Francis Karioko Muruatetu & Ano. vs Republic, Petition No. 15 of 2015 (supra)** gave directions as follows:
 - a. **The mandatory nature of the death sentence as provided for under Section 204 of the Penal Code is hereby declared unconstitutional. For the avoidance of doubt, this order does not disturb the validity of the death sentence as contemplated under Article 26(3) of the Constitution.**
 - b. ...
 - c. ...
 - d. **We direct that this Judgment be placed before the Speakers of the National Assembly and the Senate, the Attorney-General, and the Kenya Law Reform Commission, attended with a signal of the utmost urgency, for any necessary amendments, formulation**

and enactment of statute law, to give effect to this judgment on the mandatory nature of the death sentence and the parameters of what ought to constitute life imprisonment.

17. In light of the foregoing, it is my conviction that this court is functus officio. There is nothing unconstitutional in serving a constitutionally and statutorily recognized punishment unless and until the law is amended by the legislature. The petition does not meet the constitutional threshold on what constitutes a constitutional reference as espoused in the **Anarita Karimi Njeru v Republic (1979)KLR** case in which the court held that a party seeking a constitutional remedy must with reasonable degree of precision state the nature of the alleged violation, provision infringed and to what extent.

18. In a nutshell, the petition herein is anon starter hence incompetent for want of jurisdiction and at best a misadventure. Accordingly, the same is dismissed with no order as to costs.
Dated, signed and delivered virtually this 18th day of February 2026

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J. N. ONYIEGO
JUDGE