

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

MISC. CRIMINAL APPLICATION NO. E036 OF 2025

JOHN MATHENGE WACHIRA

.....APPLICANT

VERSUS

REPUBLIC.....

.....RESPONDENT

R U L I N G

- 1.** The Applicant, JOHN MATHENGE WACHIRA moved this court vide a Notice of Motion dated 18th November 2024 invoking the provision of Article 22, Clause 258 and Article 165(3) of the constitution seeking the variation of a sentence of 20 years imposed on him by the high Court for the offence of manslaughter.
- 2.** He combines a litany of prayers which include that the court applies Section 333(2) of the Criminal Procedure Code, that the sentence be substituted with one under the probation of

offenders Act, and, while still at it, he seeks a definite sentence.

3. In response, the Respondent's counsel filed a notice of preliminary objection on the ground that this court has no jurisdiction to entertain the matter.
4. The preliminary objection was canvassed by way of written submissions.
5. I have considered the Application, the preliminary objection, submissions made and the applicable law. Applicant filed written submissions and argued that failure to deduct the period he spent in remand has resulted into a disproportionate, excessive and unjust sentence. That pursuant to **Section 333(2)**, this court has jurisdiction to revise the sentence where injustice appears to have occurred.
6. The Respondent's counsel also filed written submissions. She maintained that this court is *functus officio* as it already delivered a judgment dismissing an appeal filed against the

conviction and the sentence. It cannot therefore entertain further legal process in the same matter.

7. It is noted that the Applicant herein was convicted in **Nanyuki High Court Criminal Case 10 of 2016** and sentenced to 20 years. Of determination is whether this court has the jurisdiction to review the said sentence to correct any indiscretions by the trial court.

8. The jurisdiction of the High court is provided for under **Article 165(3) of the Constitution** and includes ***unlimited original jurisdiction in criminal and civil matters; jurisdiction to enforce bill of rights; appellate jurisdiction; interpretative jurisdiction; and any other jurisdiction, original or appellate, conferred on it by legislation.*** The High court further has ***supervisory jurisdiction over subordinate*** courts donated by **Article 165(6) of the Constitution** which states that;

(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.

9. In criminal matters the High Court has jurisdiction under **sections 362** and **364** of the **Criminal Procedure Code** to review orders of subordinate courts and that power extends only to –

“...the calling of record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

10. The details of those powers of the High Court in revision are set out in **section 364**.

11. As per **Article 165(6)** and the above section, the High Court can only review or exercise revisionary powers over a subordinate court.

12. There is no law which bestows this court with jurisdiction to review a decision by a court of concurrent jurisdiction and/or its own decision however couched whether as a constitutional petition on fundamental rights

and freedoms or otherwise. No judge of the High Court can superintend over fellow judges of that court or of the superior courts. The Court of Appeal in **Peter Ng'ang'a Muiruri Vs. Credit Bank Ltd & 2 Others Civil Appeal No. 203 of 2006** held that;

“It would be a usurpation of power to push forward such an approach, and whatever decision emanates from a court regarding itself as a constitutional court, with powers of review over decisions of concurrent or superior jurisdiction, such decision is at best a nullity.”

13. The court in **David Mutai v Republic [2021] eKLR** held that;

“Though the High Court has unlimited original jurisdiction in Criminal and Civil matters under Article 165(3)(a) of the Constitution, holding it that it encompasses revisiting issues dealt with by the same Court and a step higher by the Court of Appeal, is equivalent to according the High Court cosmic jurisdiction of which it doesn't have. Litigation just like everything else bad or good, has an end. The end point in this one was at the Court of Appeal, but probably there's a slight vent to the supreme Court. Having observed the foregoing, I do find that this Court lacks jurisdiction to re-sentence the petitioner as urged. The petition therefore lacks merit and is hereby dismissed.”

14. The court in ***Stephen Mugendi Ndwiga v Republic*** [2021] eKLR observed that;

“It is my considered view that this court cannot review a judgment of Hon. S. Chitembwe J and in doing so resentence the petitioner herein...Further this court is bereft of jurisdiction to review the said judgment as doing so would be tantamount to sitting as an Appellate court on the judgment of the Learned Judge and which act the law abhors. In the same breath, this court cannot review the said judgment and in doing so take into account the time the petitioner had spent in custody. The same ought to have been dealt by Hon. Chitembwe J as the first appellate court. Failure by the said first appellate court to consider the said period cannot be rectified by this court as the same shall be akin to reviewing the decision of a court of concurrent jurisdiction.”

15. From the foregoing, any impugned orders of the court in meting out the sentence on the Applicant could only be corrected by a higher court, in our case the Court of Appeal and this includes consideration of the time spent in remand (assuming it was not factored in) as that would amount to reviewing this court’s decision.

16. With the result that the application lacks merit and is dismissed.

**Dated signed and delivered virtually this 20th day of
February 2026.**

A.K. NDUNG’U

JUDGE

ORIGINAL RULING