



**Murunga v Republic (Criminal Miscellaneous Application
E045 of 2022) [2025] KEHC 945 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 945 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL MISCELLANEOUS APPLICATION E045 OF 2022
SC CHIRCHIR, J
JANUARY 30, 2025**

BETWEEN

VINCENT NDUNGE MURUNGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By way of a Notice of motion dated 19th July 2022, the applicant herein seeks for the following orders;
 - a. That the period of time spent in remand custody by the applicant prior to being sentenced be taken into account.
 - b. That the court be pleased to order that the 20 years imprisonment imposed to commence from the applicant's date of arrest.
 - c. That may this court be pleased to grant the applicant any other relief pursuant to article 50 (2) (p) of the constitution
2. The application is premised on the grounds appearing on the face of the Application and his supporting affidavit.
3. He states that he was tried, convicted and sentenced to serve 20 years imprisonment for the offence of robbery with violence on 13th September 2013 . He appealed at the high court on both conviction and sentence and his Appeal was dismissed on both grounds.
4. He now moved this court to consider the time he spent while in remand since the trial court failed to factor in the said period.
5. He submits that he was a first offender and remorseful and states that he deserves a non –custodial and/ or a more lenient punishment.



6. The respondent made oral arguments against the Motion. Ms Osoro on behalf of the respondent informed the court that though the applicant had been sentenced to death ,on appeal, his sentenced was reduced to 20 years imprisonment. It is further submitted that this court has no jurisdiction to interfere with the sentence of a superior court and hence the application is an abuse of the court's process.

Determination.

7. A perusal of the record show that upon dismissal of the Applicant's Appeal by the high court, he moved to the court of Appeal. The court of Appeal upheld the conviction but set aside the death sentence and substituted it with 20 years imprisonment. In passing the 20 year sentence the court of Appeal noted that the Applicant had hardly served 6 years by then.
8. Thus the 20 year sentence was passed by the court of Appeal. Under the hierarchy of courts, the court of Appeal is superior to this court .
9. It is well settled that no court can bestow itself jurisdiction, and jurisdiction of a court flows only from the *constitution* or statute. Neither the *constitution* nor any statute bestow any jurisdiction to this court to review orders , judgments or sentences passed by the court of Appeal.
10. Further not only does this court not have any jurisdiction to supervise the work of the superior courts but Article 165 (6) of the *constitution* expressly bars this court from supervising superior courts. The Article provides as follows: “ 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 a superior courts”.
11. The above Article of the *constitution* is self- explanatory;- this court has no jurisdiction to grant the orders being sought.
12. The Application herein is therefore incompetent. It is hereby struck off.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 30TH DAY OF JANUARY 2025.

S. CHIRCHIR

JUDGE.

