



REPUBLIC OF KENYA



KENYA LAW
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**Kambetsa v Republic (Criminal Revision E193 of 2024)
[2025] KEHC 3484 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 3484 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL REVISION E193 OF 2024
M THANDE, J
FEBRUARY 28, 2025**

BETWEEN

SIFA KAZUNGU KAMBETSA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was convicted of the offence of defilement in Malindi Sexual Offences Case No. 284 of 2013 and sentenced to 20 years imprisonment. Aggrieved by the decision, he appealed against both the conviction and sentence in Malindi High Court Criminal Appeal No. 15 of 2021, which appeal was dismissed.
2. The Applicant has now come back to this Court vide the Petition herein seeking that the period of 1 years and 11 months he spent in custody pending trial, be discounted from his sentence, pursuant to Sentence 333(2) of the *Criminal Procedure Code*.
3. The Respondent opted not to respond to the Petition.
4. At the very outset, this Court must determine whether it has jurisdiction to entertain the Petition before it. The law, is that a court may only exercise that jurisdiction which has been conferred upon it by the *Constitution*, statute or both. This was succinctly stated by the Supreme Court in the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR, as follows:

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.

5. This Court derives its jurisdiction principally from Article 165(3) of the Constitution which confers upon it, unlimited original jurisdiction in criminal and civil matters. The provision clearly delineates and demarcates what the Court can and cannot do. The jurisdiction of this Court includes supervisory powers. By dint of Article 165(6) however, this Court cannot supervise superior courts. It provides:

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.

6. The superior courts in the court system in Kenya are listed in Article 162 (1) of the Constitution as follows:

The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts mentioned in clause (2).

7. It is common ground that upon conviction by the trial court, the Applicant unsuccessfully appealed to this Court which upheld both the conviction and sentence. What he now seeks is that this Court reviews its own decision, a jurisdiction it does not have. In this regard, I associate with the holding in John Kagunda Kariuki v Republic [2019] eKLR, where Ngugi, J, (as he then was) stated:

10. In the present case, the Applicant's appeal has already been heard by the High Court. He cannot return to the High Court for a review of the sentence imposed. He is at liberty to make an argument for reduced sentence at the Court of Appeal.

8. The Applicant ought to have raised the issue he now raises when he appealed to this Court. His appeal having been heard and determined by this Court, his only recourse lay with the Court of Appeal. Without jurisdiction to supervise a superior court, this Court cannot reopen or review the decisions of its peer of equal and competent jurisdiction.

9. In light of the foregoing, the Court finds that the Application herein is incompetent for want of jurisdiction and the same is hereby struck out.

DATED, SIGNED AND DELIVERED IN MALINDI THIS 28TH DAY OF FEBRUARY 2025.

M. THANDE

JUDGE

