



**Osman v Republic (Petition E012 of 2023)  
[2025] KEHC 3500 (KLR) (28 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 3500 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
PETITION E012 OF 2023  
M THANDE, J  
FEBRUARY 28, 2025**

**BETWEEN**

**MOHAMED ABDI OSMAN ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. The Petitioner was convicted of the offence of attempted defilement contrary to Section 9(1) as read with subsection (2) of the *Sexual Offences Act* in Malindi Sexual Offences Case No. 24 of 2020 and sentenced to 10 years imprisonment. Aggrieved by the decision, he appealed against both the conviction and sentence in Malindi High Court Criminal Appeal No. E028 of 2022, which appeal was dismissed.
2. The Petitioner has now come back to this Court vide the Petition herein seeking that the period of 2 years and 1 month he spent in custody pending trial, be taken into account, 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 Petitioner 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 Petitioner's 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 peers of equal and competent jurisdiction.

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

**DATED, SIGNED AND DELIVERED IN MALINDI THIS 28<sup>TH</sup> DAY OF FEBRUARY 2025**

**M. THANDE**

**JUDGE**

