



**Sango & another v Republic (Criminal Revision E191 of 2024)  
[2025] KEHC 3581 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 3581 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
CRIMINAL REVISION E191 OF 2024  
M THANDE, J  
FEBRUARY 28, 2025**

**BETWEEN**

**SANGO MOHAMED SANGO ..... 1<sup>ST</sup> APPLICANT**

**SOFIA SWALEH HASSAN ..... 2<sup>ND</sup> APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicants herein were charged in Malindi High Court Criminal Case No. 7 of 2011 with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. Following hearing, they were both convicted and sentenced to death. Their appeal No. 1 of 2013 to the Court of Appeal was dismissed. The Applicants state that in a constitutional petition, their sentence was set aside and a sentence of 32 years was imposed.
2. The Applicants have now moved to this Court by the present Application seeking a non custodial sentence for the balance of the term in what they refer to as “sentence rehearing on sentence only” so that they can be given a
4. that the Court considers the period of 3 years and 10 months spent in custody prior to sentencing, and reduce his sentence accordingly pursuant to Section 333(2) of the *Criminal Procedure Code*. The Applicant stated that his appeal no. 40 of 2014 in the Court of Appeal was withdrawn for lack of sufficient grounds.
5. The Respondent opted not to file a response.
6. It is necessary for this Court to determine at the outset whether it has jurisdiction to entertain the Application before it given that the sentence in question was handed down by this Court.



7. It is trite that Court may only exercise that jurisdiction which has been conferred upon it by the *Constitution*, statute or both. In the case of *Samuel Kamau Macharia & another v 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.

8. This Court derives its jurisdiction principally from Article 165(3) of the *Constitution* which confers upon this Court 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. (emphasis)

9. In the court system in Kenya the superior courts 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).

10. At the helm of the Court system in Kenya is the Supreme Court followed by the Court of Appeal. This Court falls below the Court of Appeal. The decision of the Court of Appeal dismissing the Applicant's appeal is binding on this Court. By his Application, the Applicant seeks that this Court re-opens and re-hears a concluded appeal and reviews the judgment of the Court of Appeal, a court superior to it. To entertain this matter in respect of which the Court of Appeal has pronounced itself therefore, no matter how compelling the arguments placed before it, would be to violate the constitutional judicial hierarchical norm.

11. In the case of *Kenya Hotel Properties Limited v Attorney General & 5 others* [2020] eKLR, the Court of Appeal addressed the judicial hierarchical orders and stated:

As we stated at the beginning of this judgment this appeal is disturbing. The multiplicity of endless proceedings around the same dispute does not bode well for the administration of justice...Its latest rising is the most baffling of all because the petition filed before the High Court sought strange prayers in that the Court there was being asked to annul, strike out, reverse or rescind a judgment of this Court, its elder sibling. In a system of law that is hierarchical in order, such as ours is, it seems to us that such a thing is quite plainly unheard of and for reasons far greater than sibling rivalry. The *Constitution* itself clearly delineates and demarcates what the High Court can and cannot do. One of things it cannot do by virtue of Article 165(6) is supervise superior courts.

Moreover, under Article 164(3) of the *Constitution*, this Court has jurisdiction to hear and determine appeals from the High Court. Its decisions are binding on the High Court and all



courts equal and inferior to it. It is therefore quite unthinkable that the High Court could make the orders the appellant sought as against a decision of this Court to quash or annul them, or that it could purport to direct this Court to re-open and re-hear a concluded appeal. We consider this to be a matter of first principles so that the appellant's submission that the issue pits supremacy of the courts against citizens' enjoyment of fundamental rights is really misconceived because rights can only be adjudicated upon by properly authorized courts. Any declaration by a court that has no jurisdiction is itself a nullity and amounts to nothing. It matters not how strongly a court feels about a matter, or how impassioned it may feel or how motivated it may be to correct a perceived wrong; without jurisdiction it would be embarking on a hopeless adventure to nowhere.

12. This finding of the Court of Appeal was affirmed by the Supreme Court in *Kenya Hotel Properties Limited v Attorney General & 5 others* (Petition 16 of 2020) [2022] KESC 62 (KLR) (Civ) (7 October 2022) (Judgment), which stated:
  55. We need to emphasize and reiterate that Mutunga CJ did not in any way state that the High Court may in any way, purport to overturn or order final decisions issued by higher courts than itself to start de novo, especially on appeals that have been finally concluded by the highest court at the time. Furthermore, the concurrence by Mutunga SCJ cannot override the judgment by the majority, despite what the appellant chooses to submit. As was thus rightly noted by the High Court and the Court of Appeal, the rule of thumb is that superior courts cannot grant orders to reopen or review decisions of their peers of equal and competent jurisdiction much less those court higher than themselves.
13. The circumstances herein are that upon conviction by this Court, the Applicants unsuccessfully appealed to the Court of Appeal which upheld both the conviction and sentence. They later got reprieve before this Court which sentenced them to 32 years. What they now seek is that this Court reviews its own decision and that of the Court of Appeal, a jurisdiction it does not have. Without jurisdiction to supervise a superior court, this Court cannot reopen or review the decisions of its peers of equal and competent jurisdiction, much less those of a court higher than itself.
14. In light of the foregoing, I decline the invitation by the Applicant to scrutinize and interrogate the decisions made by courts concurrent and superior jurisdiction.
15. The Application is both incompetent and an abuse of the court process and is hereby struck out.

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

**M. THANDE**

**JUDGE**

