



**Kazungu v Republic (Miscellaneous Criminal Application
E069 of 2023) [2025] KEHC 4462 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4462 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
MISCELLANEOUS CRIMINAL APPLICATION E069 OF 2023**

**M THANDE, J
MARCH 28, 2025**

BETWEEN

CHARO MWAKAMSHA KAZUNGU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein was charged and convicted in Kaloleni Sexual Offences Case No. 70 of 2011 of the offence of defilement contrary Section 8(1) as read with 8(3) of the [Sexual Offences Act](#). He was sentenced to 20 years imprisonment.
2. The Applicant have now moved to this Court seeking that the Court considers the period spent in custody pending trial, and reduce his sentence accordingly. He also sought that he be granted probation orders for the balance of his term.
3. The Respondent did not oppose the Application and left it to the Court.
4. The Applicant's Criminal Appeal No. 136 of 2012 was dismissed by the High Court at Mombasa, a fact that he did not disclose to the Court. It is in this appeal that the Applicant ought to have raised the issue of the period spent in custody, as a ground of appeal.
5. 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.

6. 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.

7. The Applicant's appeal was heard and dismissed by this Court which is a superior court. By dint of Article 165(6) of the *Constitution* therefore, this Court lacks the jurisdiction to reopen the matter to relook at his sentence. 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. In light of the foregoing, I find 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 MARCH 2025

M. THANDE
JUDGE

