



REPUBLIC OF KENYA



KENYA LAW
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**Sulubu v Republic (Criminal Revision E011 of 2024)
[2025] KEHC 4461 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4461 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL REVISION E011 OF 2024**

M THANDE, J

MARCH 28, 2025

BETWEEN

ELIZABETH BAHATI SULUBU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By an Application filed on 6.2.24, the Applicant seeks review of her sentence to the period of 5 years served.
2. The Applicant stated that she was on 15.3.18 sentenced to 25 years in prison by the High Court at Malindi for the offence of murder contrary to Section 203 as read with 204 of the *Penal Code*. Her grounds are that she is a 28 year old single mother of a 12 year old child who was 1 year old at the time of her arrest and who is still in need of love and care of her mother. She is also a first time offender and is now reformed. She has served 5 years and 8 months of her sentence and has learnt character development, respect for the law and is remorseful. She urged the Court to give her a second chance in life and award her a non-custodial sentence so that she can continue taking care of her child.
3. The Respondent opposed the Application vide grounds of opposition dated 24.4.24. The grounds are that the sentence imposed upon the Applicant was determined by the trial court as a matter of fact and that this Court does not have jurisdiction to review the same through the Application; that no proof of his illness was provided; that Kenyan laws do not provide for parole the behaviour of the Applicant notwithstanding; that the Applicant was convicted of a capital offence and ought not to be given a non-custodial sentence; that in sentencing the Applicant to 25 years, the trial court took into consideration the period spent in remand. that litigation must come to an end; that the Application ought to be dismissed as it is bad in law, an abuse of the court process and devoid of merit.



4. 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.

5. 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.

6. The Applicant was tried, convicted and sentenced 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 her sentence. The only recourse available to the Applicant is an appeal against the sentence imposed by the High Court, to the Court of Appeal.
7. In light of the foregoing, I find that the Application filed on 6.2.24 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

