



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wanjala v Republic (Criminal Revision E007 of 2023)  
[2025] KEHC 7179 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7179 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CRIMINAL REVISION E007 OF 2023  
WM MUSYOKA, J  
MAY 29, 2025**

**BETWEEN**

**ALI MOHAMMED WANJALA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. This matter is initiated as a criminal revision, premised on Article 165(6) of the Constitution and Section 333 (2) of the Criminal Procedure Code, Cap 75, Laws of Kenya.
2. I doubt that this cause is properly founded.
3. In the first place, Article 165(6) of the Constitution confers supervisory jurisdiction over proceedings being conducted by the Magistrate’s Court. It empowers the High Court to call for the file at the Magistrate’s Court for the purpose of perusing it, to satisfy itself that those proceedings were properly being conducted, and to make orders or give directions in that file for proper administration of justice.
4. In the instant case, there are no proceedings before the Magistrate’s Court capable of being recalled under Article 165(6) of the Constitution. After the Magistrate’s Court pronounced its judgement, in Busia CMCCRC No. 514 of 2002, and sentenced the applicant to death, on 18<sup>th</sup> February 2003, the matter moved out of the Magistrate’s Court, to the High Court by way of appeal, in Busia HCCRA No. 18 of 2003, which was dismissed by a panel of 2 Judges, on 3<sup>rd</sup> December 2008. The matter then moved to the Court of Appeal, on appeal, in Kisumu CACRA No. 408 of 2009, which was dismissed by a panel of 3 Judges, on 3<sup>rd</sup> July 2015.
5. So, the matter is not before the magistrates, and Article 165(6) cannot be invoked. It is not even before the High Court, where it could be argued, that as the High Court is seized of it, it can invoke Article 165(6). It came to the High Court and the High Court dealt with it. The power exercisable under Article 165(6) is also exercisable on appeal. As a first appellate court, the High Court is entitled to



peruse the record of the trial court, to satisfy itself of the propriety of the proceedings conducted by the trial court, and to arrive at its own conclusions. The appellate jurisdiction and the supervisory jurisdiction are fused, when a matter is placed at the High Court on appeal. Having appealed, the applicant cannot later seek to invoke the supervisory jurisdiction, under Article 165(6), after the High Court has disposed the matter on appellate jurisdiction, under the [Criminal Procedure Code](#).

6. As it is, the matter is far beyond invocation of Article 165(6). After the High Court it travelled to the Court of Appeal, and was disposed of. After that there was exercise of the prerogative of mercy by the President, in accordance with the [Constitution](#), where the sentence was commuted to life imprisonment.
7. There may be no substantive distinction between supervisory and revisional jurisdiction, but the two are created separately. Supervisory jurisdiction is created by Article 165(6) of the [Constitution](#), while the revisional jurisdiction is provided for under sections 362 to 364 of the [Criminal Procedure Code](#). The jurisdiction under Article 165 (6) of the [Constitution](#) targets ongoing proceedings at a subordinate court, while the jurisdiction under section 362 to 364 of the [Criminal Procedure Code](#) largely targets final orders made by the magistrates court in criminal proceedings. Revisional jurisdiction is available in lieu of appeal. A party who has unsuccessfully invoked the appellate jurisdiction of the High Court and the Court of Appeal cannot, consequently, revert to the revisional jurisdiction of the High Court. Once an appeal is proffered, and disposed of, the alternative remedy of revision would be exhausted and unavailable.
8. I see that the applicant also invokes section 333 (2) of the [Criminal Procedure Code](#), which requires a sentencing court to reckon the period spent in custody, before sentence, in calculation of any custodial treatment imposed. The applicant herein was sentenced to death by the trial court. Section 333(2) of the [Criminal Procedure Code](#) could not apply. That sentence was upheld, on appeal, by the High Court and the Court of Appeal. The appellate courts could not have invoked that provision on appeal, as they dismissed the appeals, and confirmed the death sentence.
9. According to the applicant, after he exhausted his appeal, his death sentence was commuted to life imprisonment by the President of the Republic of Kenya. It would appear that it is on account of that commutation that he would like section 332(2) of the [Criminal Procedure Code](#) invoked. Can it be? I do not think so. Section 333(2) of the [Criminal Procedure Code](#) is about court proceedings. Commutation of sentences by the President is not a judicial process. It is not governed by the [Criminal Procedure Code](#), and, therefore, section 333(2) of the [Criminal Procedure Code](#) does not and cannot apply.
10. Having exhausted all his appeals, the applicant has practically exhausted his right to judicial intervention, so far as his punishment is concerned. If he has an issue to raise, on account of his having reformed, to warrant his being considered for leniency, and possible reduction of sentence, or non-custodial measures, his fate would lie with the Executive.
11. After being convicted and sentenced, the judicial process ends, and the convict is handed over to the Executive, for that is the organ of the State responsible for carrying out sentences on convicted persons. There is only a limited window for judicial intervention, with respect to sentences, and that is through appeals. However, once these are exhausted, there would be very little room, to revisit the matter through the judicial process. Implementation of sentences is an Executive jurisdiction, carried out through the prison service, probation, community service and other agencies. Whether a convicted person, serving imprisonment, has reformed enough to be released, before completing his sentence, is a matter in the domain of the Executive, through exercise of the prerogative of mercy or revision.



12. I believe that I have said enough, to demonstrate that I have no jurisdiction to do that which the applicant is inviting me to do, through his Motion, dated 16<sup>th</sup> August 2023. That Motion is without merit, and I hereby dismiss it. Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 29<sup>TH</sup> DAY OF MAY 2025.**

**W.M. MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Mr. Ali Mohammed Wanjala, Applicant in person.

Advocates

Mr. Onanda, instructed by the Director of Public Prosecutions, for the Respondent.

