



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwithia v Republic (Criminal Petition E010 of 2023)  
[2025] KEHC 11231 (KLR) (29 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11231 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL PETITION E010 OF 2023  
SM GITHINJI, J  
JULY 29, 2025**

**BETWEEN**

**JAMES MWITHIA ..... APPELLANT**

**AND**

**REPUBLIC ..... PROSECUTION**

**JUDGMENT**

1. By way of Chamber Summons, the applicant herein by the name James Mwithia Marete seeks review of the sentence meted against him in consideration of the period spent in remand.
2. He alleges that he was arrested on 19<sup>th</sup> May 2014 and charged with the offence of rape Contrary to Section 3(1) (a) and (c) of the [sexual offences Act](#) No. 3 of 2006. After the trial, he was found guilty, convicted and sentence to serve 19 years imprisonment on 27<sup>th</sup> June, 2019.
3. Dissatisfied with the said conviction and sentence he appealed to the High Court *vide* Criminal Appeal No. 114 of 2019.
4. The court dismissed the appeal, upholding the conviction and sentence.
5. He seeks redress on the grounds that his right to a fair trial under Article 25 (c) of the [Constitution](#) as violated for failure by the trial court and the High court to consider the period spent in remand as required under Section 333 (2) of the [Criminal Procedure Code](#) in the meted sentence of 10 years imprisonment.
6. The respondent opposed the Application on the grounds that the issue having been dealt with by a court of concurrent jurisdiction, this court lacks jurisdiction to hear the same.
7. The issue for determination is whether this court have jurisdiction to review a confirmed sentenced of 10 years by a court of concurrent jurisdiction.



8. Under Article 165 (6) and (7) of the *Constitution* of Kenya, The High Court has supervisory jurisdiction over the Subordinate Courts and over any person, body or authority exercising a judicial or quasi-judicial function. This means the High Court Judges can only supervise lower courts and not other High Court Judges as they are of concurrent jurisdiction.
9. Section 362 of the *Criminal Procedure Code* empowers the High Court to call for and examine the record of any criminal proceedings before any Subordinate Court for the purposes of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. This makes it clear that the revisionary powers apply only to Subordinate Courts, and not to Courts of concurrent jurisdiction.
10. The doctrine of hierarchy of courts in Kenya is to the effect that a court can only review or overturn a decision from a lower court.
11. The position was acknowledge in the case of *Thomas Patrick Gilbert Cholmondeley v Republic* [2008] eKLR where the Court held:-

“The High Court does not have the jurisdiction to sit on appeal against or to review the decisions of a court of concurrent jurisdiction unless expressly provided for in law.”
12. Also in *Ben Kiprono Kosgei v Republic* [2019] eKLR, the same was emphasized in the following terms:-

“A Judge of the High Court cannot revise or review the decision of another Judge of concurrent jurisdiction. The proper forum for redress is the Court of Appeal.”
13. In *Criminal Appeal NO. 144 OF 2019*, which involves this matter, Justice D.S Majanja at Paragraph 15 of the Judgment observed:-

“Having considered the circumstances of the case and in particular that the appellant took advantage of a person he knew had certain disabilities and the level of violence inflicted, I find the sentence of 10 years imprisonment appropriate.”
14. As indicated in the foregoing, the observation or holding is by a court of concurrent jurisdiction and in law I do not have jurisdiction to review it for whatsoever reason.
15. The bottom line is the Application lacks merit and is hereby dismissed for want of jurisdiction.

**DATED AND DELIVERED AT MERU THIS 29<sup>TH</sup> JULY, 2025**

**S.M. GITHINJI**

**JUDGE**

Apperances:-

Applicant -present in Meru Prison.

Ms. Adhi -for state.

