



Wanjira v Republic (Petition E009 of 2021) [2024] KEHC 5202 (KLR) (30 April 2024) (Ruling)

Neutral citation: [2024] KEHC 5202 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
PETITION E009 OF 2021**

**M MUYA, J
APRIL 30, 2024**

BETWEEN

JAMES MAONA WANJIRA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This petition seeks the following reliefs:
 - a. A declaration that mandatory nature of death penalty imposed upon the petitioners under Section 296(2) and Section 297(2) of the Penal Code is unconstitutional
 - b. A declaration that the nature of sentences currently being served by the petitioners is inconsistent with article 28 of the constitution.
 - c. Calls upon the court to analyze the respective cases and determine whether the magnitude and or circumstances in which they were committed.
 - d. A declaration that the petitioners are constitutionally guaranteed benefits of the least severe punishment.
 - e. An order to render the trial back to the trial court for mitigation and determination of re-sentencing in line with article 25(c) and 50(2) (p) of the constitution.
 - f. Invocation of Section 216, 329, 333(2) of the CPC and 389 of the Penal Code on appropriate sentences.
 - g. An order reconsidering the petitioners' sentences.
2. The petition is expressed to be brought under article 22(1) and 50(2) of the constitution seeking redress of a denial and or infringement of their rights.



3. The petitioners were convicted of attempted robbery with violence and robbery with violence offences in various courts and different court files. They were sentenced to suffer death, appealed in High Court and their appeals were dismissed, they later proceed to file their appeals in the court of appeal where their appeals were similarly dismissed. Most, if not all, have clearly, exhausted the appellate process and this is conceded.
4. Article 22 (1) of the constitution provides:-

“The High Court has jurisdiction in accordance with article 165 to determine applications for redress of a denial, violation or infringement to a right or fundamental freedom of the bill of rights”
5. Article 50 (2) of the constitution provides:-

“Every accused person has the right to a fair trial which includes the right (q) to appeal or apply for review”

The main issue before this court is that of jurisdiction.
6. In the celebrated case of Owners Of Motor Vessel Lillian S v Caltex Oil (Kenya) Limited (1989) Nyarang, JA was of the view:-

“Jurisdiction is everything without it a court has no power to make one more step, where a court has no jurisdiction, there would be no basis for a continuation of proceedings... A court of law downs its tools in respect of the matter before it, the moment it holds the opinion that it is without jurisdiction”
7. In the Supreme Court case of Samuel Kamau Macharia v KCB & 2 others Civil Application No. 2 of 2011 it was held:-

“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 laws. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law”
8. Article 50 (2) of the constitution provides:-

“Every person has the right to a fair trial which includes the right (q) if convicted to appeal to, or apply for review by a higher court as prescribed by law”
9. Article 165 (6) of the constitution clothes the High Court with Supervisory Powers over subordinate courts and tribunals. This Supervisory Jurisdiction is in the form of review.
10. Section 362 of the Criminal Procedure Code provides:-

“The High Court may call for any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding sentence or order recorded or passed and as to the regularity of any proceedings of any subordinate court”
11. It is instructive to note that some of the reliefs sought are declaratory in nature and call for the court to analyze the respective cases. The said cases were heard by magistrate courts, appeals were determined by both the High Court and Court of Appeal and dismissed. This court is therefore being invited to



review those cases. The review contemplated under section 364 of the Criminal Procedure Code relates to criminal cases under the Subordinate Courts.

12. Similarly, the review contemplated under article 50 (2) of the constitution including appeal, lies to a higher court.
13. Article 22(1) of the constitution gives the High Court jurisdiction in accordance with article 165 to determine applications for redress of a denial, violation or infringement to a right or fundamental freedom of the bill of rights.
14. If I understand the gist of the applicant's petition clearly, their contention is that their rights were violated and or denied and infringed by the Magistrates Courts, the High Court and the Court of Appeal in their various decisions and this court is being invited to make declarations to that effect.

The doctrine of Stare decisis

15. Article 163 (7) of the constitution provides:-

“ All courts, other than the Supreme Court are bound by the decisions of the Supreme Court”

16. In the case of Jasbir Singh Rai & others v Tarlochan Singh & 4 others (2013) eKLR it was held:-
17. The adherence to the Principle of Judicial Precedent or stare decisis is of utmost importance in the administration of justice in the courts in East Africa and thus to the conduct of the everyday affairs of its inhabitants, it provides a degree of certainty as to what is the law of the country and is a basis on which individuals can regulate their behavior and transactions as between themselves and also with the state.

Conclusion and determination

18. Whereas article 23 (1) of the constitution gives the High Court jurisdiction to hear and determine applications for redress of denial violation or infringement of or threat to a right or fundamental freedom in the bill of rights.
19. That exercise has to be in conformity with the provisions of article 165 of the constitution.
20. Supervisory Powers granted to the High Court are in respect to Subordinate Courts but not to superior courts which include the High Court itself, the Court of Appeal and the Supreme Court. Article 165 (6) of the constitution imposes and or places limitation on the High Court to supervise the other superior courts. The decisions this court is being asked to review and make various declarations against, were heard and determined by superior courts.
21. By reason of the foregoing, I am not persuaded that this court has jurisdiction to entertain the applicants' petitions. I do not find any merit and they are disallowed with no orders as to costs. The upshot is that they will serve the imprisonment terms as earlier ordered by the courts.

RULING DELIVERED IN OPEN COURT THIS 30TH DAY OF APRIL, 2024.

In the presence of:-

Petitioners in person

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M. MUYA

JUDGE

