



**Odiambo v Republic (Criminal Revision E088 of 2024)
[2024] KEHC 15099 (KLR) (25 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15099 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL REVISION E088 OF 2024
RE ABURILI, J
NOVEMBER 25, 2024**

BETWEEN

STANLEY ODUOR ODIAMBO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Stanley Oduor Odhiambo is an accused in Ukwala PM Cr. E017/2023 where he was charged of the offence of Robbery with Violence contrary to Section 296 of the [Penal Code](#).
2. On 18/3/2024, in the absence of his advocate who now says his network for virtual hearing was faulty, the court proceeded to hear and complete the prosecution witnesses and placed the accused on his defence which traumatized him that he attempted to escape from lawful custody leading to him to be sentenced to serve 6 months imprisonment. The Applicant seeks that the proceedings of 18/3/2024 be set aside and all the witnesses who testified on that date be recalled to testify again.
3. One of the unlimited rights of an accused person under Article 50 (2) of the [Constitution](#) is the right to be represented by an advocate of own choice during the trial.
4. In this case, there is no contrary evidence from the Prosecution Counsel that Mr. Ochanyo had internet issues and spoke to the prosecution counsel his predicament but the advocate watching brief for the complainant insisted on the court proceeding with the hearing, absence of Mr. Ochanyo counsel for the accused person notwithstanding.
5. There is no evidence that the accused was hell bent to derail the hearing since he was present on the hearing date, only that his counsel was not available on the platform.



6. As courts, we are aware of the accused person's right to a fair trial which rights cannot be limited. In this case, that right was curtailed because his counsel was absent owing to bad internet connectivity, which fact he had already communicated to the prosecution counsel.
7. I therefore exercise supervisory jurisdiction of the High Court under Article 165 (6) and (7) of the Constitution and set aside and vacate the proceedings of 18/3/2024 and direct that the prosecution witnesses who testified on that date shall be recalled to testify on a suitable date to be fixed in the presence of both parties and their advocates. This ruling to be served upon the trial court and the Office of the Director of Public Prosecutions, Ukwala and Siaya for appropriate action.
8. This file is closed. I so order.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 25TH DAY OF NOVEMBER, 2024.

R. E. ABURILI

JUDGE

