



**Charles v Republic (Criminal Revision E066 of 2024)
[2024] KEHC 14741 (KLR) (22 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14741 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL REVISION E066 OF 2024**

LW GITARI, J

NOVEMBER 22, 2024

BETWEEN

KELVIN MWENDA CHARLES APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant has filed a Notice of Motion dated 15/10/2024 seeking a revision of the order of the trial magistrate denying a request of the withdrawal of the complaint by the complainant in Chuka Criminal case No. E821/2023 *Republic v Kennedy Muriithi*. That the court do declare the charges against the applicant as withdrawn and accordingly issue an order acquitting the applicant in Criminal Case No. E821/2023 .
2. The brief background of the case is that the applicant was charged with assault causing actual bodily harm in Criminal Case No.E821/2023 in the Chief Magistrate’s Court at Chuka on 23/10/2024. On 14/5/2024 the complainant made an application for the withdrawal of the case since he had healed and had reconciled with he accused who is not only a neighbor but also a figure of support akin to an older brother to the complainant. The State represented by the ODPP did not oppose the application for the withdrawal of the case.
3. However the learned trial magistrate declined the application terming the application as an abuse of court process and directing the matter to proceed to full trial. The applicant contends that the learned trial magistrate failed to exercise his discretion judiciously and failed to promote re-conciliation as provided under Section 176 of the *Criminal Procedure Code*. That the leaned magistrate failed to honor the powers of the Director of Public Prosecutions vested under Article 157(b) of the *Constitution* to determine what proceedings to continue and which to terminate. The Article 159 of the *Constitution* emphasizes the importance of reconciliation. That no prejudice will be suffered. The respondent submitted that at the centre of criminal proceedings is the victim and that under the *Victim Protection*



Act and the prosecution is allowed to enquire from the victim how he wishes to have the case proceed. The case was at the defence stage and could be the reason why the application was declined. However the complainant can withdraw the case at any stage. The DPP on the other hand can withdraw under Section 87(a) Criminal Procedure Code. That the trial magistrate misdirected himself. The respondent conceded to the application.

4. I have considered the application. It seeks orders under supervisory jurisdiction of this court. Section 362 of the Criminal Procedure Code provides that:-

“The High Court may call for and examine the record of 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 such subordinate court.”

5. On the other hand Article 165 (6) & (7) of the Constitution provides:-

“6. 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.

7. For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”

6. The powers which the High Court may exercise are provided under Section 364(b) of the Criminal Procedure Code which provides that in case of an order other than the order for acquittal the High Court may alter or reverse the order.

7. What is in issue is propriety, legality or correctness of the order issued by the learned magistrate

8. In this case the complainant appeared before the learned magistrate on 14/5/2024 and applied to withdraw the charge for the reasons that he had healed and had not been coerced. The prosecutor did not oppose the application.

9. The learned magistrate declined the application and ordered that it would amount to an abuse of court process. It is presumed that the application was made under Section 204 of the Criminal Procedure Code which allows a complainant to withdraw her case at any stage. Section 204 of the Criminal procedure Code provides that

“If a complainant at any time before a final order is passed in a case under the part, satisfies the court there are sufficient grounds permitting him to withdraw his complaint the court may permit him to withdraw it and shall there upon acquit the accused.”

10. The section gives the court discretion to allow a complainant to withdraw its case at any stage and for sufficient reasons. The court may allow a complainant to withdraw the case if there are sufficient grounds for permitting him to withdraw his complaint.

11. The Learned magistrate in this case declined to allow the application and termed it an abuse of court process. Section 362 of the Criminal Procedure Code *supra* provides that the High Court shall examine the record 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 such subordinate court. This is buttressed by Article 165(6) & (7) of the *Constitution* (*supra*).

12. I find that the learned magistrate exercised his discretion fairly as provided under Section 204 of the *Criminal Procedure Code*. It was not mandatory that the learned magistrate had to allow the application. The applicant had an obligation to give good reasons for withdrawing the case. The order issued by the learned magistrate was not an irregular order or proceedings that were amenable to this court's powers of review. The discretion of the court was exercised judiciously as the applicant did not give sufficient reasons. I find that the application for review has no merits. Section 204 of the *Criminal Procedure* does not give absolute powers to withdraw the charges. The powers of revision vested on this court does not include making orders which the trial court should have issued. The applicant did not demonstrated that he had reconciled with the complainant nor did he invoke Article 159 of the *Constitution* before the trial court. These are matters which the applicant has only raised in this court. In the case of *Republic v Samuel Gathino Kamau* (2016) eKLR, Justice HPG Waweru (Retired) stated that

“needless to say, supervisory jurisdiction is exercised as may be provided by the law- by way of appeal revision etc it does not include any perceived power to make a decision on behalf of a sub-ordinate court which that court ought to make.....

As for revision the supervisory jurisdiction is exercised in respect to findings, sentences orders and regularity of any proceedings.”

13. The order issued by the learned magistrate was within the powers of he learned magistrate. The court finds no reason to interfere with the order. The trial should proceed before the learned magistrate. The application for revision is dismissed.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 22ND DAY OF NOVEMBER 2024.

L.W. GITARI

JUDGE

22/11/2024

The ruling has been read out in open court.

L.W. GITARI

JUDGE

22/11/2024

