



**Director of Public Prosecution v Thethe & another (Miscellaneous Criminal Application E026 of 2023) [2023] KEHC 18623 (KLR) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18623 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
MISCELLANEOUS CRIMINAL APPLICATION E026 OF 2023**

**SM GITHINJI, J**

**MAY 31, 2023**

**BETWEEN**

**DIRECTOR OF PUBLIC PROSECUTION ..... APPLICANT**

**AND**

**SAMMY KALUME THETHE ..... 1<sup>ST</sup> RESPONDENT**

**JAMES KALUME THETHE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

Coram: Hon Justice S.M Githinji

1. I have seen the lower court proceedings and considered the application for review. The application is by the prosecution/ODPP who were a party in the suit. The provisions of section 364 (5) of the Criminal Procedure Code applies in this matter.

It states; -

“When an appeal lies from a finding, sentence or order, and no such appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.”

2. My reading of this provision is that review is not available to a party who has the right to appeal against the impugned order, finding or sentence by the court as such party should simply file an appeal. Review is not a short cut for appeal and is not meant to be an alternative to appeal.

3. The prosecution should therefore have appealed. The application for review is bad in law and is hereby dismissed.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 31ST DAY OF MAY, 2023**

.....



**S.M. GITHINJI**

**JUDGE**

