



REPUBLIC OF KENYA



**Onalo v Director of Public Prosecutions (Criminal Revision  
E532 of 2023) [2023] KEHC 20846 (KLR) (Crim) (31 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20846 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL REVISION E532 OF 2023  
DR KAVEDZA, J  
JULY 31, 2023**

**BETWEEN**

**FRANCIS SIENE ONALO ..... APPLICANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... RESPONDENT**

*(Being an application for sentence review from the Ruling delivered by  
Hon. E. Kimilu (SPM) on 6th June 2022 at Milimani Chief Magistrate's  
Court criminal case no. 14 of 2019 Republic vs Francis Siene Onalo)*

**RULING**

1. The applicant has filed a Notice of Motion application dated June 22, 2023 under certificate of urgency and supported by the affidavit of the applicant, Francis Siene Onalo, seeking revision of his sentence. He prays for orders, *inter alia*, that the court be pleased to revise and/or set aside orders and directions issued by the trial Court. That the court be pleased to order that the case be heard by a different Magistrate.
2. The applicant was charged before Milimani Magistrates Court with the alleged offence of defilement contrary to section 8(1) as read with section 8(2) of the [Sexual Offences Act](#).
3. The applicant challenges the decision of the Trial Magistrate on the ground that during the hearing, she sustained an objection raised by the prosecution to the production of 2 copies of documents which the Honorable court deemed to be electronic evidence. Further, that the Honorable court declined to grant the defence an adjournment in order to present two witnesses because they failed to attend court on the said date. That while rendering the decision, the Honorable court made unsavory comments towards both the prosecution and learned defence counsel.



4. According to the applicant, if this Honorable Court fails to intervene and grant the prayers sought herein, then the accused's inalienable right to a fair trial and justice will not be seen to be done.
5. Firstly, I note that the instant application is premised on the provisions of section 333 (2) of the *Criminal Procedure Code* which invokes the revisionary jurisdiction of this court as donated by section 362 of the *Criminal Procedure Code* providing as follows:
 

“...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.”
6. Under section 362 of the *Criminal Procedure Code* stated above, the court in an application for revision, is called upon to call for the record and inquire into 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. In so doing, the court ought to scrutinize the record and upon satisfying itself that the matter properly falls for an inquiry under revision, reverse the orders made.
7. Further, Article 165(6) and (7) of the *Constitution* provides;
  - “(6) The High court has supervisory jurisdiction over the subordinate courts and over any person before any authority exercising a judicial or quasi-judicial function, but not before 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, or 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.”
8. The High Court of Malaysia in *Public Prosecutor Vs Mubari Bin Mohd Jani and Another* [1996] 4LRC 728 at 734 held as follows regarding the issue of revision.
 

“.....the object of revisionary power of the High Court is to confer upon the High Court a kind of “Paternal or supervisory jurisdiction” in order to correct or prevent a miscarriage of justice. In a revision, the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice...”
9. The application is premised on two grounds;
  - a) That the court be pleased to revise and or/set aside the orders and directions issued by Honourable Esther Kimilu (SPM) in Milimani Chief Magistrate Court Sexual offence Case No 14 of 2019 on June 16, 2022 and June 6, 2023, to wit, that the applicant be allowed to tender documentary evidence and secondly, the applicant be granted an opportunity to call his (two) 2 witnesses.
  - b) That the case be heard by a different Magistrate other than the trial magistrate.
10. With respect to the first issue for determination, I do note from the record that the applicant had more than one year to tender his evidence and avail his witnesses. He failed to do so within reasonable time hence the Magistrate's decision to deem his case as closed. The question is whether the Magistrate exercised her discretion judiciously? The record clearly indicates that the applicant was granted



sufficient time to avail his evidence. It is manifest from the record therefore, that the trial Magistrate properly exercised her discretion to have the applicant's case closed.

11. Secondly, the applicant has challenged the decision of the lower court in which it sustained an objection raised by the prosecution to the production of two copies of documents.
12. To my mind, this is an issue that can only be challenged on appeal. For this court to order the Magistrate to admit certain evidence would be tantamount to micromanaging her proceedings.
13. If the applicant is dissatisfied with the decision of the court, he should await and challenge it at the appropriate time.
14. Finally, the applicant sought an order that the matter be heard by another trial court on the ground that the applicant is not likely to get justice from the court currently hearing his case. The reason advanced by the applicant is that the magistrate made unsavory comments. The applicant has however, not disclosed what those comments were and they do not appear to be in the proceedings. Since the applicant was and is represented by counsel, he had a duty to raise the issue with the trial court immediately the unsavory words were made.
15. I must state at the outset that it is always appropriate for parties to have their cases heard and determined by the courts to which their cases have been assigned. This is prudent to prevent parties from engaging in forum shopping thereby creating some chaotic and messy situations likely to lead to a mockery of justice. Further, it is a cardinal rule that parties are expected to have faith and confidence in the courts trying their cases unless there are really cogent reasons to be presented to the judicial officers seeking their recusal.
16. I have failed to see any illegality, irregularity, or impropriety of the orders made by the subordinate court. The end result therefore, I find the ground for revision completely devoid of merit. The same is hereby dismissed.
17. Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 31<sup>ST</sup> DAY OF JULY 2023**

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**D. KAVEDZA**

**JUDGE**

**In the presence of:**

Ms Chege for the State

Mr Kimosop for the Applicant

Ms Joy C/A

