



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CRIMINAL REVISION NO.E053 OF 2022

JOHNSTONE KORIR.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

REVISION RULING

1. This is a Revision Application filed Under Certificate of Urgency dated 14/3/2022 seeking the following Orders:-

(i) THAT the Application be certified urgent and service thereof be dispensed with in the first instance. [SPENT]

(ii) THAT pending the hearing and determination of this Application/Suit, this Honourable Court be pleased to issue an order of stay of all the proceedings in Republic - versus - Johnstone Korir Criminal Case Number E3398/21 presided over by Hon. A. Ajwang.

(iii) Pending the hearing and determination of this Application/Suit, this Honourable Court be pleased to call for the Lower Court Proceedings in Republic -versus – Johnstone Korir Criminal Case Number E3398/21 for perusal and certification as to the legality, correctness and propriety of the order made by Hon. A. Ajwang on 25th February, 2022 refusing the applicant's Application to review and set aside its Order to place the applicant in his defence, reopening the Prosecution's Case and refusing to order the recalling of all the Prosecution's witnesses for Cross-Examination.

(iv) This Honourable Court be pleased to vacate and set aside the orders issued on the 25th February, 2022 refusing the applicant's Application to review and set aside its order to place the Applicant in his defence, reopening the Prosecution's Case and refusing to order the recalling of all the Prosecution's witnesses for Cross-examination.

(v) This Honourable Court be pleased to reopen the Prosecution's Case and further be pleased to Order the recalling of all the Prosecution's witnesses for Cross-Examination.

(vi) The costs of this Application and the entire suit be provided.

(vii) Any other or further relief that this Honourable Court shall deem fit to grant.

2. The Application is supported by the Affidavit of Benedict Ombati Morata in which it is deposed as follows:-

(i) THAT on or about the 28/11/2021 the Mr. Johnstone Korir (Applicant herein) while acting in person was put to his defence in Republic vs. Johnstone Korir in Criminal Case Number E3398/21.

(ii) THAT the applicant upon procuring services of legal counsel, through his counsel on record filed an application dated 19/1/2022 seeking to reopen the prosecution case and recall prosecution witnesses for purposes of cross examination, which was vehemently opposed by the prosecution. The trial magistrate declined to reopen the prosecution case and/ or recall prosecution witnesses for cross examination, the trial court found that the applicant had a case to answer and he was put in his defence.

(iii) THAT the proceedings in Republic vs. Johnstone Korir in Criminal Case Number E3398/21 were irregular and illegal and violated the applicant's right to a fair hearing.

(iv) THAT there was no legal justification warranting the court to refuse to reopen the prosecution case and/or recall prosecution witnesses for cross examination. It is against such background that the applicant invoked the revisionary jurisdiction

of the High Court.

3. The Learned Counsel for the Applicant submitted orally and in essence repeated his averments outlined in the supporting Affidavit.
4. The Prosecution opposed the application and also briefly submitted orally, the prosecution submitted the applicant had been put on his defence and that the applicant should wait for the court's decision and then appeal.
5. The High Court is vested with revisionary powers under Article 165 (6) and (7) of the Constitution of Kenya, 2010 which provides as follows;

Article 165

“(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.”

Section 362 of the Criminal Procedure Code CAP 75 also provides 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. The issues for determination in this application are as follows:-

(i) Whether the order of the Trial Court in refusing to reopen the Prosecution Case is prejudicial to the applicant.

(ii) Whether the conduct of the Trial Court in this case was illegal, improper or irregular.

7. The Applicant is seeking to reopen the Prosecution Case for reasons that the applicant was not represented by an Advocate at the time the case proceeded.

8. The Applicant also stated that the person who is alleged to be the Complainant in the Charge Sheet is not the real Complainant in the case.

9. I find that such as issues can only be raised in grounds of Appeal and the same cannot entitle the Applicant to reopen the Prosecution Case.

10. In the case of the ***Republic vs. James Kiarie Mutungei [2017] eKLR Nyakundi J.*** highlighted the role of the high court in exercising the revisionary power vested upon it by the Constitution and statutory provisions as follows; ***“the rationale of the High Court as a revisionary authority can be initiated by an aggrieved party or suo moto made by the court itself, to call for the record relating to the order passed or proceedings in order to satisfy itself as to the legality, propriety or correctness of the order in question. The scope of revision therefore is more restrictive in comparison with the appellate jurisdiction which requires the high court to rehear the case and evaluate the evidence in totality by the lower court to come with a decision on the merits.”***

11. In the circumstances of this case, I find that the applicant was given a chance to cross-examine the prosecution witnesses. The fact that he did not have an Advocate does not entitle him to re-open the prosecution case.

12. The Applicant was placed on his defence and after giving his testimony, he filed this revision application seeking to reopen the Prosecution Case.

13. The prosecution case cannot be reopened at the stage of defence hearing.

14. I find that the applicant has not shown that there is an order that is incorrect illegal or irregular which will require this Court to interfere with the proceedings before the Trial Court.

15. The revisionary powers of the High Court are not meant to micro manage the Trial Court but to forestall any illegal, improper or irregular orders.

16. The revision application is accordingly dismissed for want of merits.

17. The applicant is directed to proceed with defence hearing and to be patient until the Trial Court has made a determination before he can exercise his right of appeal.

18. The original file to be returned back to the Trial Court so that the hearing can proceed.

Delivered, dated and signed at Kericho this 25th day of March, 2022.

A. N. ONGERI

JUDGE