



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Karanja (Criminal Revision E183 of 2022)
[2022] KEHC 10233 (KLR) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10233 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL REVISION E183 OF 2022
RB NGETICH, J
JUNE 30, 2022**

BETWEEN

REPUBLIC APPLICANT

AND

BONIFACE KIMANI KARANJA RESPONDENT

RULING

1. This is a ruling request for review of Chief Magistrate ruling delivered on 29th November, 2021 by DPP through letter dated 24th February, 2022. The DPP asked this court to call for the trial file with a view of satisfying itself of the correctness, legality and propriety of the ruling and order made by Honourable Letizia M. Wachira (C. M).
2. In the trial court, Boniface Kimani Karanja was charged with the offence of Obtaining Money by False Pretences Contrary to Section 313 of the Penal Code. The particulars are that, on 11th November 2016, at Limuru area within Kiambu County with intent to defraud obtained Kshs. 700,000/= from Joseph Gitiria Kamau, by falsely pretending that he could supply fish sausages.
3. The accused on 26th June 2017, appeared before the Senior Principle Magistrate, he pleaded not guilty to the charge and was released on a bond of Kshs. 1,000,000/= with one surety. On 6th July 2017, the trial court revised the bond terms to Kshs. 700,000/= and further revised to Kshs. 500,000/= on 17th July, 2017.
4. The case was then fixed for hearing on 4th September, 2017, when the matter came for mention on 11th August, 2017, the accused sought adjournment. The hearing date was slated for 4th September, 2017 on ground that his advocate will be handling election petitions. The court fixed the matter for hearing on 1st November, 2017.



5. On 1st November 2017, the matter was adjourned on the account that the accused was admitted at War Memorial Hospital. On 1st December 2017, the court fixed the matter for hearing on 26th March, 2018 .
6. On 26th March 2018, 10th April, 2018, 18th May, 2018 and 21st May, 2018 the accused was absent. It was established by the Prosecution that the accused was convicted and was serving sentence in Nairobi West Prison.
7. On 30th May, 2018 the accused was produced in court through a production order. The matter was fixed for hearing on 25th July, 2018.
8. On 25th July, 2018 the matter was adjourned on the account of the prosecution as it did not have the police file. The hearing was fixed for 19th September, 2018. On the subsequent hearing dates, the accused was absent on account he was remanded at Nairobi West Prison.
9. On 5th December, 2018, 22nd May, 2019 and 10th July, 2019 the prosecution had two (2) witnesses ready to proceed with the case. The accused adjourned the hearing, and on 10th July, 2019 the accused was given the last adjournment. But on 15th October, 2019, the trial court allowed the defence a further adjournment.
10. On 13th March, 2019, 20th March, 2019, 23rd August, 2019, 26th August, 2019, 2nd September, 2019 and 11th September, 2019, the accused was absent.
11. On 28th January, 2020, 14th September, 2020, the prosecution sought adjournment of the hearing and the prosecution was issued with the last adjournment. When the matter came up for hearing on 29th November, 2021, the prosecution notified the court that the parties intended to settle the matter out of court and sought a mention in two (2) month's time. The court noted the file is a 2017 matter and has been in the system for five (5) years. The court directed the prosecution to proceed with its case and allowed parties to negotiate before finalizing the matter. In the absence of any witness for the prosecution, the court acquitted the accused under Section 210 of the Penal code.
12. On 2nd March, 2022, I called for the lower court file. On 31st May, 2022, the parties indicated they did not wish to submit and urged the court to peruse the lower court file and issue a ruling.

Analysis and Determination

13. I have perused the trial court file The issue for determination is whether the trial magistrate's order of acquittal is revisable under Sections 362 and 364 of the *Criminal Procedure Code*.
14. High Court may exercise its jurisdiction of revision if satisfied that any finding, sentence or order recorded or passed or the regularity of any proceedings of any court subordinate to the High Court, did not meet the required standards of correctness, legality and propriety.
15. The powers of the High court to revise the orders of the subordinate court are entrenched in Article 165 (6) and (7) of *the Constitution* of Kenya 2010, 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.

Article 165 (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."



16. There is no doubt that the case had been adjourned severally. From the history stated above, it is clear that the several adjournments of the hearings were at the instance of the accused. On 10th July 2019, the accused was granted a last adjournment but several other adjournments were issued thereafter.
17. From the proceedings, they were ready to proceed with two(2) witnesses on the 5th December, 2018, 22nd May, 2019 and 10th July, 2019 but the accused sought to adjourn the matter.
18. The trial court did issue a last adjournment to the prosecution and the defence on 26th October, 2021. On 29th November, 2021 the prosecution sought adjournment on ground that parties were negotiating but were asked to proceed and accused was acquitted under Section 210 of the Penal Code for prosecutions failure to avail witnesses.
19. The jurisdiction of this court to call for a subordinate file for review is anchored under Section 362 of the Criminal Procedure Code to recall a lower court file and examine the record of the criminal proceedings. The said section empowers the High Court to:

“ 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 such subordinate court.”
20. Further Section 364 of the Criminal Procedure Code provide as follows:
 - (1). In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—
 - a. in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
 - b. in the case of any other order other than an order of acquittal, alter or reverse the order.
 - (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.
 - (3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.
 - (4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
 - (5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.
21. Section 364 (4) exempts the court from interfering with an acquittal of the trial court.



22. I find the application by the DPP unattainable. The provisions of Section 364(4) are in the mandatory terms. I do however appreciate that as per *the Constitution* the court is vested with the powers to review orders by the subordinate court which are made illegally and irregularly.
23. In the circumstances, I find this court lacks the jurisdiction to order the revision of a subordinate court on acquittal. The DPP can seek a remedy of appeal rather than revision under Section 348A of the Criminal Procedure Code.
24. Final Orders
 1. The application for revision is hereby dismissed.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU THIS 30TH DAY OF JUNE, 2022.

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RACHEL NGETICH

JUDGE

In the Presence of:

Kinyua – Court Assistant

Mr. Ngaruya holding brief for complainant

Mr. Kelwon – For State

