



**Viljoen v Republic (Miscellaneous Criminal Application E024 of 2022)  
[2022] KEHC 13159 (KLR) (29 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13159 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
MISCELLANEOUS CRIMINAL APPLICATION E024 OF 2022  
TW CHERERE, J  
SEPTEMBER 29, 2022**

**BETWEEN**

**JOHANNES PETRUS VILJOEN ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. On October 15, 2020, Hon Mbicha (SRM issued the following order in Meru Chief Magistrate's Criminal Case No. 68 of 2019 to wit:  
  
"As per prosecution's request which is not objected to by the defence, the wooden poles exhibits to be returned to the complainant as photos of the same have already been taken.
2. Applicant argues that no application for release of exhibits was made by the prosecution and no response was offered by the defence and that the order by the learned trial magistrate forms an error on the face of the record that calls for revision.
3. Ms. Mwaniki for the state in response to the Applicant's application for revision conceded that she had perused the court file and the proceedings of October 15, 2020 and confirmed that the indeed no application for release of exhibits was made by the prosecution.
4. I have considered the notice of motion dated May 25, 2022 and the response by the state and the issue for determination is whether the Applicant has made out a case for revision of the order dated October 15, 2020.
5. The High Court power of revision is set out in Article 165 which 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 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 *Criminal Procedure Code* provides the procedural law on revision. Section 362 of the Act provides that: -
- The High Court may call 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.
7. The revisionary jurisdiction of the High Court was discussed by Odunga J in a persuasive decision of *Joseph Nduvi Mbuvi v Republic* [2019] eKLR:-
- “In my considered view, the object of the revisional jurisdiction of the High Court is to enable the high Court in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court’s revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well.”
8. The parties in this matter agree that the order by the trial magistrate was made without prompting by either of the parties to the suit. No doubt the jurisdiction of the trial court was exercised arbitrarily leading to a grossly erroneous decision.
9. From the material placed before the court, it has been demonstrated that the order issued on October 15, 2020 is incorrect and manifestly irregular. It is therefore hereby ordered that the words “As per prosecution’s request which is not objected to by the defence, the wooden poles exhibits to be returned to the complainant as photos of the same have already been taken” be and are hereby expunged from the court record.

**DATED AT MERU THIS 29<sup>th</sup> DAY OF September 2022**

**WAMAE. T. W. CHERERE**

**JUDGE**

**Appearances**

**Court Assistant - Mr. Kinoti**

Applicant - Mr. Mwangi Kariuki for Mwangi Kariuki & Co. Advocates

For the State - Ms. Mwaniki (PPC)

