



REPUBLIC OF KENYA



KENYA LAW
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**Muriuki v Republic (Criminal Revision 094 of 2022)
[2022] KEHC 15642 (KLR) (28 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15642 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL REVISION 094 OF 2022
CM KARIUKI, J
NOVEMBER 28, 2022**

BETWEEN

WILSON MACHARIA MURIUKI APPLICANT

AND

REPUBLIC RESPONDENT

(ARISING FROM (In The Chief Magistrate Nyahururu CR NO. 1657 OF 2022))

RULING

1. By a letter dated November 23, 2022, the court is moved under sections 362, 363, 364, 365, 366 and 367 of the *Criminal Procedure Code* and articles 159 2(d),50, and 51 *Constitution* of Kenya. The gist of the matter is the order of November 23, 2022 ordering the applicant to be remanded in custody indefinitely, awaiting the attendance of the surety of the appellant for examination.
2. I have perused the trial court proceedings of November 23, 2022 and the letter of complaint. The explanation by the applicant advocates discloses a mixing of hearing dates. The trial court did not interrogate the address by the advocate nor hear the applicant before, apparently cutting short the enjoyment of the constitutional right of the bond pending trial. The previous record of applicant court attendance was not adverted to.
3. The surety is not the repository of the knowledge of whether the applicant refused to attend court or the commission of an innocent mistake of non-attendance for the hearing of the matter. The applicant had and is a repository of the same, and he could have explained the surety absence, notwithstanding.
4. The proceedings of the material date impugned herein on a *prima facie* basis fail the test of the constitutional fairness threshold.



The Law

5. The High Court's power of revision is set out in article 165, which provides:-

- (6) The High Court has supervisory jurisdiction over the subordinate courts and 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.

Section 362 of the [Criminal Procedure Code](#) provides:-

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.

9. Section 364(1) of the [Criminal Procedure Code](#) provides:-

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 his knowledge, the High Court may”-

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 sentence;

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.

6. The revisionary jurisdiction of the High Court was discussed by Odunga J in a persuasive decision of [Joseph Nduvi Mbuvi vs 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 it goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well.”

7. Similarly, Nyakundi J in [Prosecutor vs Stephen Lesinko \[2018\] eKLR](#) outlined the principles which will guide a court when examining the issues pertaining to section 362 of the [Criminal Procedure Code](#) as follows: -

- a. Where the decision is grossly erroneous;
- b. Where there is no compliance with the provisions of the law;



- c. Where the finding of fact affecting the decision is not based on evidence, or it is the result of misreading or non-reading of evidence on record;
 - d. Where the material evidence on the parties is not considered; and
 - e. Where the judicial discretion is exercised arbitrarily or perversely if the lower court ignores facts and tries the accused of the lesser offence.
8. The foregoing provisions convey jurisdiction to this court to exercise revisionary powers in respect of orders of the subordinate courts. Therefore, this court has the requisite jurisdiction to hear and determine this application.
9. In view of the above, this court finds that the proceedings of November 23, 2022 cannot stand and, thus, a nullity for want of fairness. The ODPP, via Mr Omooria's Senior Assistant Director of Public Prosecution, did not oppose the application; therefore, the court makes the following orders;
- i. The proceedings and order remanding the applicant in custody are hereby declared a nullity for violating the constitutional threshold of fairness.
 - ii. The applicant's bond/bail terms, as approved by the court, are reinstated, and the applicant / accused shall be released forthwith unless otherwise lawfully held.
 - iii. Applicant shall continue to abide by bail terms henceforth.

DATED, SIGNED, AND DELIVERED AT NYAHURURU ON THIS 28TH DAY OF NOVEMBER 2022.

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CHARLES KARIUKI
JUDGE

