



REPUBLIC OF KENYA



KENYA LAW
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**Gichuki v Republic (Criminal Appeal E044 of 2022)
[2022] KEHC 15652 (KLR) (24 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15652 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL APPEAL E044 OF 2022
MM KASANGO, J
NOVEMBER 24, 2022**

BETWEEN

TARATSIO GICHUKI APPLICANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the Ruling and order the Senior Principal Magistrate's Court at Ruiru (Hon. J.A. Agonda, PM) dated 4th July, 2022 in Criminal Case No. 270 of 2021)

JUDGMENT

1. Taratsio Gichuki has filed an appeal against a ruling of the Principle Magistrate charged before the Ruiru dated July 4, 2022. By that Ruling, the Magistrate's Court made a finding that the prosecution had disclosed a prima facie case and therefore put the appellant, who is the accused thereof, to his defence.
2. Section 347 (1) and (2) of the *Criminal Procedure Code* provide that an appeal from a conviction from a trial before a magistrate's court lies in the High Court. Such an appeal as stated in section 347(2) is on matters of law and facts. The appellant hereof was not convicted in the Ruiru Magistrate's Court's case. That court made a finding that he had a case to answer. Section 347(1) and (2) provides thus:-
 - (1) Save as is in this Part provided:-
 - a. a person convicted on a trial held by a subordinate court of the first or second class may appeal to the High Court; and
 - (b) Repealed by Act No. 5 of 2003, s. 93.
 - (2) An appeal to the High Court may be on a matter of fact as well as on a matter of law."



3. The appellant is essentially seeking to appeal an interlocutory order. In the case *Onesmus Kimanyi Ngila Vs. Republic* (2020) eKLR Justice D.O. Ogembo discussed the provisions of section 347 and its application to an appeal against interlocutory order and the learned judge stated:-

“From the jurisprudence available, the High Court has only allowed interlocutory applications for revision or appeals in exceptional circumstances or sparingly. And the rationale here is to avoid hearing appeals in a piecemeal manner and also to avoid undue delay in the conclusion of the case before the lower court. A case in point and to which I am guided is Isaac Karanu Mbugua vs. Republic (2018) eKLR, in which the Hon. Justice Joel Ngugi, sitting at the High Court is Kiambu stated:-

“I should begin by observing that our jurisprudential policy is that interlocutory revisions of this nature are only sparingly allowed by the High court. This is to avoid hearing appeals in a piecemeal manner with the risk of producing conflicting and embarrassing outcomes as well as unduly delaying criminal trials.

In the same case, the court further held that such powers of revision or appeal at interlocutory stage could only be exercised in cases of great injustice. The court otherwise held that the salutary general rule is that appeals are not entertained piecemeal...”

4. Bearing the above in mind this appeal shall be struck out in limine. This court will require the Deputy Registrar to open a revision file. Revision is the correct action this court can take in respect of the order of Ruiru Magistrate’s Court of July 4, 2022.

Disposition

5. The orders of the court are that:-
- a. This appeal is hereby struck out in limine
 - b. The file shall henceforth be closed.
 - c. The Deputy Registrar of this court is requested to open a revision file on the matter brought forth in this appeal and the same be placed before this court for action.

RULING DATED AND DELIVERED AT KIAMBU THIS 24TH DAY OF NOVEMBER, 2022.

MARY KASANGO

JUDGE

Coram:

Court Assistant: Julia

Mr. Masariru instructed by Masaviru & Ketoo Advocates for the appellant:

For the Respondent (DPP) : - Kasyoka

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE

