



REPUBLIC OF KENYA



KENYA LAW
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**Gichuki v Republic (Criminal Revision E221 of 2022)
[2022] KEHC 15605 (KLR) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15605 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL REVISION E221 OF 2022
MM KASANGO, J
NOVEMBER 24, 2022**

BETWEEN

TARATSIO GICHUKI APPLICANT

AND

REPUBLIC RESPONDENT

(Being a criminal Revision Application from an order at Ruiru Senior Principal Magistrate's Court (Hon. J.A. Agonda, PM) Criminal Case No. 270 of 2021 dated 4th July, 2022)

RULING

1. Taratsio Gichuki was charged before the Ruiru Magistrate's Court with the offence of forcible detainer contrary to Section 91 of the Penal Code. He pleaded not guilty. The trial was adjourned before its commencement from time to time. Before any evidence was adduced on behalf of the prosecution, the trial court made the following Ruling:-

“Ruling

The accused person namely Taratsio Gichuki was charged with the offence of forcible detainer contrary to Section 91 of the [Penal Code](#) Cap 75, Laws of Kenya.

I have carefully gone through the evidence adduced by the prosecution witnesses and the accused person's counsel filed his written submissions and do find that the same has disclosed a prima facie case against the accused person. He is accordingly put on his defence in respect of the above count preferred against him for the prosecution had provided sufficient evidence, this case shall proceed for defence hearing.

Dated, signed and delivered in open court this 4th day of July, 2022.

J.A. Agonda



Principal Magistrate”

2. Section 282 of the Criminal Procedure Code provide that if an accused pleads not guilty or a plea of not guilty is entered the court shall proceed to try the case. Section 306 of that Code further provides that at the close of the prosecution’s case the court may record a finding of not guilty where it considers there is no evidence the accused committed the offence and where the court, after considering the evidence finds the accused committed the offence, it shall inform the accused of his rights to present his defence.
3. The Ruiru Magistrate’s Court Ruled on 4th July, 2020 that Taratsio Gichuki had a case to answer before the prosecution adduced any evidence at all. That was an error. It is human to err. Human beings make mistake. It is inherent to being human.
4. Section 362 of the *Criminal Procedure Code* provides relief for such errors. It provides thus:-

“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.”
5. Section 364 of the Criminal Procedure Code empowers the High Court to revise subordinate court’s order made in criminal matters, to correct errors or illegalities.
6. This Court will therefore invoke the above sections to correct the error.

Disposition

7. The orders of the court are that:-
 - a. The order made in the Ruling of 4th July, 2022 in Senior Principal Magistrate’s Court at Ruiru in Criminal Case No. E270 of 2021 is hereby set aside and vacated.
 - b. The Senior Principal Magistrate’s Court Ruiru Criminal Case No. E270 of 2021 shall be mentioned before that court on 16th December, 2022 for directions on further hearing.
 - c. I order this Revision file be closed.

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

MARY KASANGO

JUDGE

Coram:

Court Assistant: Julia

For the Applicants: Mr. Musaviru

For the Respondent (DPP) : - Kasyoka

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE

