



**Republic v Wesonga (Criminal Revision E011 of 2022)
[2022] KEHC 15716 (KLR) (22 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15716 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL REVISION E011 OF 2022
PJO OTIENO, J
NOVEMBER 22, 2022**

BETWEEN

REPUBLIC APPLICANT

AND

SILAS JUMA WESONGA RESPONDENT

RULING

1. On the October 28, 2021 at the instance and request of the prosecution and on account of lack of witnesses, the court granted a final adjournment and stood over the matter to the May 19, 2022.
2. Come the date set, Ms Onyango, the prosecuting counsel, told the court of her inability to proceed with the matter on the basis that the Investigating Officer was not before the court. It is not recorded whether the views of the accused persons was ever sought but the court then noted that there was in the court file an order for final adjournment and ordered that the prosecution's case be closed.
3. In coming to such conclusion the court noted the case to be one registered in 2015 and reserved a date for ruling on whether or not the accused had a case to answer.
4. The ruling was then reserved for the June 20, 2022 and was so delivered. In its ruling the court found that the prosecution had proved a *prima facie* case that needed the accused persons to rebut.
5. It is not the decision placing the accused on their defence but rather, the decision dismissing the prosecution's application for adjournment which is sought to be revised.
6. In its request for revision, the prosecution faults the court for having proceeded to close the case rather than declining the adjournment first. That and the fact that one prosecution witness turned up in court later, no specific time in the day is disclosed, are the only reason the revision is sought.
7. Now, the power of the court to revise the decisions of the lower court is purposed to interrogate the legality, correctness and propriety of the order or decision made and the irregularity of the proceedings



taken. All that is targeted at ensuring that due and fair administration of justice is achieved. Accordingly an error that would invite an order for revision must be the kind that misses the purpose of the court to do substantial justice and meets the goals of fair administration of justice.

8. In this matter, it is conceded that the prosecution had been granted a final adjournment and did not have any of the remaining witnesses when the matter was called out. The court finds that, unless for its own discretion the court was to adjourn the matter, the likely order on the request for an adjournment was that it would be refused. It would have been refused and ought to have been refused on account of the age of the criminal case and for lack of a plausible reason why the Investigating Officer did not attend court. The court calculates the age of the case as at the date of the order to have been six years. In those six years the prosecution had only availed three witnesses.
9. As a state officer, managing a public office, the trial court had an obligation to among others; act with accountability to the public. I see no accountable way the court would have acted in justifying a further delay of a six year old case by granting an adjournment to the prosecution who had not offered any reason why the Investigating Officer, the engine of the case, had not attended court. While it would have been neater to take the response of the accused, decline the adjournment first and affording the prosecution to make an election on what to do, I see such failure not to have occasioned any injustice or negated on a fair administration of justice at all.
10. The court has the obligation never to delay justice, to offer justice in an efficient and substantive manner devoid of procedural technicalities and in an expeditious manner. That I find to have been advance by the order dated May 19, 2022 on which basis I find no merit in the request for revision. The same is declined.
11. Let the lower court file be remitted back to that court forthwith so that the matter is progressed towards conclusion.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 22ND DAY OF NOVEMBER 2022.

PATRICK J. O. OTIENO

JUDGE

In the presence of:

Ms. Chala for the Prosecution/Applicant

No appearance for the Respondent

Court Assistant: Polycap Mukabwa

