



REPUBLIC OF KENYA

IN THE HIGHCOURT OF KENYA

AT NYAHURURU

REVISION CASE NO E003 OF 2021

REUBEN MWANGI NGURI.....APPLICANT

-VS-

REPUBLIC.....RESPONDENT

RULING

1. The background facts are that the Applicant was charged before the court on 16th June 2017 vide Criminal Case No. 1020/2017 with the offence of forcible detainer contrary to Section 91 of the Penal Code and malicious damage to property contrary to Section 339 (1) of the Penal Code. He pleaded not guilty and the matter was set down for hearing. The prosecution then made an application to substitute the complainant from being Esther Wanjiru Maina to James Ndungu Wanjiku who is the owner of the property that is subject in the charge sheet; which application was granted by the Chief Magistrate's court vide the ruling dated 11th March 2021. Consequently, the Applicant filed an application for revision dated 16th April 2021 seeking the following orders:-

I. Spent.

II. Spent.

III. That this honorable court be pleased to review, vary, revise and/or set aside the proceedings, ruling and orders of Hon. J. Wanjala Chief Magistrate issued on 11th March 2021.

IV. That this honorable court be pleased to order that the Nyahururu Chief Magistrate Court in Criminal Case No. 1020 of 2017 proceed from where it had reached on 19th November 2020.

V. That the costs of this application be in the cause.

2. The application was based on 28 grounds as contained in the supporting affidavit dated 16th April 2021.

3. **Section 362**

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.”

5. The prayer of revision vested in this court under **Section 362 of the Criminal Procedure Code** is principally to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to regularity of any proceedings of any subordinate court. Accordingly, revision is by no means to be taken as an appeal by the aggrieved party to the High Court in criminal cases where such orders are being sought under **Section 364** on revision the court should steer clear from trespassing into the realm of appellate jurisdiction.

6. According to Prof. Tan in his article on appellate, Supervisory and Revisionary jurisdiction, Longman Publishers 1989 (Walter Woon Edition at page 233 he set out the following differences:

(a) Supervision extends to all administration interests but revision to subordinate courts

(b) Supervision depends upon party initiative in seeking relief but revision may occur on a judge’s initiative on the other hand.

(c) Supervision of entirety is unlawful to questions not touching the merits of the case but the revision will lie on the errors of law and fact.

(d) Supervision is effected by way of prerogative writs but revision is marked by complete flexibility of remedies.

7. The essence of this jurisdiction under section 362 as read with section 364 of the Criminal Procedure Code has been considered in several cases. In the case of *Kiwala v Uganda* 1967 EA 758 the court held that:

“Once a case has been revised by the High court becomes *functus officio* and that the revision is final unless there is an appeal to the court of appeal”

In addition, the case of *Uganda v Polasi* the court held:

“The case has come to this court’s notice in the exercise of its functions. The accused, it would seem, was unaware of the illegality of the sentence..... Once this state of affairs has come to the notice of the High Court, what must it do when it is enjoined to exercise general powers of supervision and control over the magistrates’ courts, coupled with the specific powers of revision, underthe Criminal procedure Code? The court is clothed with authority to correct errors Here the accused is sentence to undergo imprisonment for seven years, a sentence which exceeds the legal limits by five years and, accordingly, there’s a gross illegality. In these circumstances, the clear duty of this court, notwithstanding the fact that the accused has abandoned his appeal, is to invoke ...the Criminal Procedure Code and cure the illegality. I would hold that in the circumstances of this case, even if this court is *functus officio*, it has jurisdiction under its revisional powers to correct the formidable error of the trial magistrate which has already occasioned an injustice”

8. Further support for this view is to be found in the English Court of Appeal decision *REX Versus Compensation Appeal tribunal* 1952 IKB 338 – 347 where it was stated:

“The court of Kings Bench has an inherent jurisdiction to control all inferior tribunals, not in an appellate capacity but in a supervisory capacity. This control tends not only to seeking that the inferior tribunals keep within their jurisdiction, but also to seeking that they observe the law.”

The control is exercised by means of a power to quash any determination by the tribunal which, on the face of it offends against the law, when the kings Bench exercises its control over tribunals in this way, it is not usurping a jurisdiction which does not belong to it.

It is only exercising a jurisdiction which it has always had.”

9. It is plain from the above passage that the High Court is vested into wide revisionary powers to look into the orders, decisions, proceedings, sentences where any of the following circumstances manifest themselves.

(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 as not based on the evidence or it is result of mis-reading or non-reading of evidence on record

(d) Where the material evidence on the parties is not considered.

(e) where the judicial discretion is exercised arbitrarily or perversely if the lower court ignores facts and tries the accused of lesser offence, (See Article on Revision in civil and criminal cases by Rabia Tus – Sarela and Marya [http://www.academia.Edn/24795/revision is in Civil and Criminal Cases](http://www.academia.Edn/24795/revision%20is%20in%20Civil%20and%20Criminal%20Cases))

10. In considering similar provisions under the Indian Criminal Procedure Code and applicable statute on revisional powers. The Supreme Court in the case of *Sriraja Lakshmi Dyeing Works v Pangaswamy Chettair* [1980] 4SCC 259 said as follows:

“The conference of revisional jurisdiction is generally for the purpose of keeping tribunal subordinate to the revising tribunal within the bounds of their authority to make them act according to law, according to the procedure established by law and according to well defined principles of justice. Revisional jurisdiction as ordinarily understood with reference to our statutes is always included in appellate jurisdiction but not vice versa. The question of the extent of appellant or revisional jurisdiction has to be considered in each case with reference to the language employed by the statute. The dominal ideal conveyed by the incorporation of the words to satisfy itself under section 25 read as which has similar provisions with our section 362 of the Criminal Procedure Code (Cap 75 of the Laws of Kenya) emphasis mine is essential a power of superintendence. The scope of the revisional powers of the high court where the high court is required to be satisfied that the decision is according to law as to the legality and propriety of the order under revision, which is quite obviously as much wider jurisdiction. That jurisdiction enables the court of revision, in appropriate cases, to examine the correctness of the findings of facts also, though the revisional court is not a second court of appeal (emphasis supplied).”

11. I reiterate that the provisions being considered by the Supreme Court of India in this case are substantially and materially identical with our provisions under section 362 of the Criminal Procedure Code. The legal principles enunciated by the apex court in deciding the matter are therefore relevant in this case.

12. Similarly in *Slaw Wallace & Co. Ltd v Govindas Paru Slothamdas & Another* [2001] 3SCC 445 the court observed that,;

“in the High Court satisfying itself as to the regularity of the proceedings of the correctness, legality or propriety of any decision or order passed therein and if, on examination, it appears to the High Court that any such decision or order should be modified, annulled, reversed, or remitted for consideration it may pass such order accordingly.”

13. It is to be appreciated that the ambit created by the provisions of section 362 of the code empowers this court to exercise discretion as to the correctness, legality and propriety of the order or proceedings. There is no dispute that the trial court which held the sessions complained of by the applicant is inferior to this court as outlined in our Constitution of the Republic. The subordinate court is therefore a subject of supervisory and superintendent by this court in both judicial and administrative function. The court can therefore annul, review, vary or issue further directions on the matter complained of by an aggrieved party or which came into the attention of the court suo-moto. The only rider in the circumstances of this jurisdiction is to ensure the accused has an opportunity to be heard or his legal counsel before any decision is reached

14. In the present case, the primary issue is **whether the subordinate court acted illegally and/or irregularly in amending the charge sheet by substituting the name of the complainant from Esther Wanjiru Maina to James Ndungu Wanjiku?** Section 214 of the Criminal Procedure Code provides for amendment of charges. It reads as follows:

1) Where, at any stage of a trial before the close of the case for the prosecution, it appears to the court that the charge is defective, either in substance or in form, the court may make such order for the alteration of the charge, either by way of amendment of the charge or by the substitution or addition of a new charge, as the court thinks necessary to meet the circumstances of the case:

Provided that-

where a charge is so altered, the court shall thereupon call upon the accused person to plead to the altered charge;

(ii) where a charge is altered under this subsection the accused may demand that the witnesses or any of them be recalled and give their evidence afresh or be further cross-examined by the accused or his advocate, and, in the last-mentioned event, the prosecution shall have the right to re-examine the witness on matters arising out of further cross-examination.

(2) Variance between the charge and the evidence adduced in support of it with respect to the time at which the alleged offence was committed is not material and the charge need not be amended for the variance if it is proved that the proceedings were in fact instituted within the time (if any) limited by law for the institution thereof.

(3) Where an alteration of a charge is made under subsection (1) and there is a variance between the charge and the evidence as described in subsection (2), the court shall, if it is of the opinion that the accused has been thereby misled or deceived, adjourn the trial for such period as may be reasonably necessary.”

15. The aforementioned Section gives the court a wide discretion to allow amendment of a charge sheet upon an application. Needless to say, the said discretion must be exercised judiciously. I find that the substitution of the complainant’s name is not in any way prejudicial to the Applicant and there was no miscarriage of justice occasioned by the Chief Magistrates Court.

16. I am of the view that this is not a proper case for revision, as the Applicant has not proven any illegality or irregularity in the proceedings conducted by the subordinate court. Further, having considered the numerous grounds upon which the Applicant relied on I find that they do not support his application and some of which should have been raised during the hearing itself or by way of appeal.

17. In the premises therefore, the application for revision lodged by the Applicant lacks merit and court makes the orders;

i. The revision is hereby dismissed.

ii. The trial before the subordinate court shall proceed to its conclusion.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 23RD DAY OF JUNE, 2021

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CHARLES KARIUKI

JUDGE