



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL REVISION NUMBER E001 OF 2021

IN THE MATTER OF: AN APPLICATION FOR REVISION UNDER ECTION 362,

364 AND 365 OF THE CRIMINAL PROCEDURE CODE CHAPTER 75 OF THE

LAWS OF KENYA AND SECTION 9(2) AND (3) OF THE VICTIM

PROTECTION ACT, ACT NUMBER 17 OF 2014 ARTICLES 165(6)

AND (7) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: THE MAGISTRATE'S COURT

AT NAKURU CRIMINAL CASE NUMBER 468 OF 2019;

REPUBLIC

- VERSUS -

- 1. PETER KIBE**
- 2. GITONGA NELSON**
- 3. BENSON MUNGAI**
- 4. DANIEL KAMAU**
- 5. SAMUEL KIBANYA**
- 6. DAVID MUNIU**
- 7. DANIEL MAINA**
- 8. MICHAEL KABIA**

RULING

1. By a letter dated 8th February 2021, through his lawyer Mr. Pravin Bowry Advocate, Mansukh Patel the Complainant in Nakuru Chief Magistrate's Criminal Case No. 468 of 2019: Republic vs Peter Kibe & 8 others sought the exercise of the Revisionary powers of this court under Article 165(6) and (7) of the Constitution in the following terms:

i. Call for and examine the record in Chief Magistrate Court at Nakuru in Criminal Case Number 468 of 2019; Republic vs Peter Kibe and 8 others for purposes of satisfying and pronouncing itself as to correctness, legality and propriety of the proceedings and the orders issued on 15th October 2020,

ii. Revise, vary and/or set aside the orders issued on 15th October 2020 by the Honourable K.I.Oreng (SRM) in Nakuru Chief Magistrate Criminal Case Number 468 of 2019; Republic vs. Peter Kibe and 8 others and order that the trial proceed to its logical conclusion before any other court of competent jurisdiction.

2. The background to the application is that on the 15th October 2020 the Hon K.I Oreng SRM made an order whose effect was to allow an application by the Prosecution to withdraw, under **Section 87(a) of the Criminal Procedure Code**, the charges against the accused persons.

3. The accused persons were charged as follows;

i. The 1st Accused person Peter Kibe Mbae was charged with an offence of Incitement to Violence contrary to section 96(b) of the Penal Code. The particulars of the offence were that on 30th January 2019 at Solai area in Rongai Sub-County within Nakuru County, without lawful excuse uttered words “endeni mchome hiyo shamba na mzibe barabara” which words indicated or implied that it was desirable to set on fire the farm of Mansukh Patel, an act which was calculated to lead to the damage or destruction of coffee trees, Cyprus trees, Eucalyptus trees, Grevillea trees and other indigenous crops, property of Mansukh Patel.

ii. Benson Mungai Mureithi, Daniel Kamau Kimani, Samuel Kibanya Muchiri, David Muniu Kamau, Daniel Maina Kiburi and Micheal Kabiya Karogo the 4th to 9th accused Persons respectively were charged with setting fire to crops of cultivated produce contrary to sections 334(c) of the Penal Code. The particulars of the offence were that on 30th January 2019 at Solai area in Rongai Sub-County within Nakuru County, jointly with others not before court willfully and unlawfully set fire to the farm of Mansukh Patel which burnt down coffee trees, Cyprus trees, eucalyptus trees, Grevillea trees and other indigenous crops all valued at Kshs. 7,000,000 (seven million) properties of Mansukh Patel.

iii. Peter Kibe Mbae, Samuel Nga’nga’ Kariuki, Gitonga Nelson Ndirangu, Benson Mungai Mureithi, Daniel Kamau Kimani, Samuel Kibanya Muchiri, David Muniu Kamau, Daniel Maina Kiburi and Micheal Kabiya Karogo the 1st to 9th accused persons respectively were charged with an offence of Malicious Damage to Property contrary to section 339 (1) of the Penal Code. The particulars of the offence was that on 30th January 2019 at Solai area in Rongai Sub County within Nakuru County jointly with others not before court willfully and unlawfully damaged the windscreen of GKA 260 Y make Land Rover valued at Ksh.30,000/= property of Solai Assistant County Commissioner.

iv. Peter Kibe Mbae, Samuel Nga’nga’ Kariuki, Gitonga Nelson Ndirangu, Benson Mungai Mureithi, Daniel Kamau Kimani, Samuel Kibanya Muchiri, David Muniu Kamau, Daniel Maina Kiburi and Micheal Kabiya Karogo the 1st to 9th Accused persons respectively were charged with Malicious Damage to property contrary to section 339 (1) of the Penal Code. The particulars of the offence were that on 30th January 2019 at Solai area in Rongai Sub-County within Nakuru County jointly with others not before court willfully and unlawfully damaged the windscreen of GKB 183 A make Land Cruiser valued at Ksh.30,000/= property of Solai Administration Police.

4. Plea was taken on the 11th February 2019. Each of the accused persons pleaded not guilty.

5. The court record shows that the accused persons were granted bond. On the 14th February 2019 the record shows that the accused persons were represented by Mr. Gakinya, Mr. Okuo and Mr. Ojou. Mr. Wesonga was present holding brief for Mr. Masinde watching brief for the victim. This position of the victim was reinforced by the court in its Ruling to the effect that as per the Victim Protection Act Mr. Masinde did not need the leave of court to represent the victim. Mr. Masinde continued to appear for the victim and even on 18th February 2019 had his brief held by Mr. Murunga. The Court fixed the matter for hearing on the 27th July 2019. The 1st to 7th accused persons and their counsel were absent but Mr. Masinde for the Victim was present. The Court was told that there was a Petition No. 9 of 2019 which had stayed the proceedings.

6. On 14th October 2019 Mr. Okuo for 1st accused, Mr. Malenya for the 2nd to 9th accused and Mr. Masinde for the victim were present in court when the court was informed that the stay orders in the Petition no 9 of 2019 had been discharged on 31st July 2021. The matter was fixed for hearing on the 3rd February 2020.

7. On 3rd February 2020 the trial court Hon F. Munyi PM recused herself from the case having dealt with the 9th accused in a different unrelated matter. On the same date it was mentioned before Hon. Usui CM who reallocated it to Hon Mararo PM. He took pre-trial directions and fixed it for hearing on the 4th May 2020.

8. I suspect due to Covid 19 the matter did not proceed but was to later be mentioned before him on the 20th July 2020 when he gave it a mention date for 15th October 2020.

9. On that 15th it was mentioned before Hon K I Oreng SRM and it is then that the record shows that an application to withdraw was made by the prosecution.

10. Though the learned magistrate’s hand writing was described as indecipherable I have spent time and carefully studied the proceedings of that day and I think this is what they appear to say: think this is what they say:

“15/10/2020

Before Hon K .I Oreng SRM

C/P Mburu

C/A Chebii/Caston

Accused: Present

Okuo for 1st Accused

Ojou for 2nd to 9th Accused

CP: I apply to withdraw under Section 87(a) of the Criminal Procedure Code. The reason is that some of the requirements were not met. The Investigating Officer will cover the (orders/areas (not clear)) by the ODPP directions.

Okuo: I do not oppose....(indecipherable) cash bail

Order: Matter withdrawn under Section 87(a) of the Criminal Procedure Code. The cash bail be refunded to the depositors.... (indecipherable)”

11. It is this order that aggrieved the victim who approached the Court pursuant to the provisions of **Sections 362, 364 and 365** of the Criminal Procedure Code , **section 9(2) and (3) of the Victim Protection Act, Act Number 17 of 2014** and **Articles 165(6) and (7)** of the Constitution of Kenya.

12. The Complainant’s Counsel respectfully submitted that the lower court’s proceedings of 15th October 2020 were a travesty of justice, a nullity and an abuse of the court process for the following reasons;

[a] The record is incomplete, incomprehensible, vague and uncertain as there is no proper record of who was in court and what transpired leading to the withdrawal of the charges against the 9 accused persons.

[b] All accused persons were not present in court and the record does not reflect the Coram correctly.

[c] The last page of the proceedings containing the orders of the court is completely indecipherable, meaningless and of no legal consequence.

[d] The complainant/victim’s representative was not informed of the withdrawal and was not present in court yet it appears the court proceeded to discharge the accused without giving the complainant/victim an opportunity to be heard on the Application to withdraw.

13. That the Application made by the prosecution was a direct violation of the Director of Public Prosecution’s (DPP)’s Constitutional duty to exercise the powers conferred by Article 157 of the Constitution with due regard to the public interest ,the interests of the Administration of justice and the need to prevent and avoid abuse of the legal process.

14. The complainant averred that the prosecution’s application to withdraw charges against the accused persons done in the absence of the complainant or victim’s appointed representative and the victim was not informed in advance of the prosecutions intentions to withdraw the case and not given an opportunity to present his concerns and views as provided under section 9(2) and (3) of the Victims Protection Act, Act No. 17 of 2014.

15. The complainant counsel asserted that the court under section 87 (a) is duty bound to adjudicate on the merits and demerits of the application after a fair hearing which in the instant case was not done.

16. The prosecution did not file any response to Complainant’s Application. However on 4th of June 2021 they made oral submissions. They submitted that they have powers to withdraw criminal case under section 87(a) of the Criminal Procedure Code. That on 15th October 2020 all parties were present as shown by the lower court’s record and the complainant never raised any objection. That their decision to withdraw was prompted by the fact that none of the witnesses had recorded written statements.

17. The prosecution further argued that the victim could not compel them to reinstate charges as they are not the 2nd prosecutor; further that they did not need the victim’s consent before withdrawing the case. They relied on Article 157 of the Constitution which mandates them to do so.

18. In support of their submissions the prosecution also relied on the case of Joseph Lendrix Waswa vs Republic [2020] eKLR.

19. The prosecution averred that the decision to reinstate a case rests on them and the victim has moved the court wrongly as he ought to have filed private prosecution proceedings. They urged the court to dismiss his application.

20. In addition to the submissions by the prosecution, the accused persons through their counsel Chimei and Company Advocates filed Respondents Submissions. They opposed the application on grounds similar to those raised by the prosecution;

a. This Court lacks jurisdiction under its Revisionary Jurisdiction to reinstate the criminal charges and/or compel the Prosecutor to reinstate the prosecution of the Respondents. The Applicant's cause of action if any only lies under judicial review and or institution of a private prosecution if it all he meets the requirements necessary for a private prosecution;

b. That the power to prosecute and withdraw charges is a power vested with the Director of Public Prosecution under **Article 157 of the Constitution** and in exercise of the said powers the DPP cannot be supervised by any person or body;

c. The Complainant/Victims Advocate does not act as a second prosecutor and does not have to give concurrence for the Prosecutor to withdraw charges under **section 87 of the Criminal Procedure Code**;

d. All the accused persons were present on 15th October 2020 and the proceedings are clear;

e. The Respondents cannot be punished for poor extraction of court records and/or poor recording of court proceedings by a judicial officer or judicial staff. If aggrieved the applicant can prefer a complaint against the said judicial officer at the Judicial Service Commission.

21. **On the issue of Jurisdiction they relied on the case of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) limited [1989] eKLR**

22. On the application of provisions for Revisional Jurisdiction are in **sections 362-367 of the Criminal Procedure Code Chapter 75, Laws of Kenya** they cited **Naivasha Criminal Revision 4 of 2020: DPP vs Perry Mansukh and others**

23. On the participation of the victim they argued that the prosecution did not require the consensus of the counsel for the victim in order to apply for withdrawal. They relied on **Joseph Lendrix Waswa v Republic [2020] eKLR**, where the Court observed as follows with regards the role of the victim's Advocate:

"76. Additionally, a victim cannot and does not wear the hat of a secondary prosecutor. When victims present their views and concerns in accord pg. 5 with section 9(2) (a) of the Victims Protection Act, victims are assisting the trial Judge to obtain a clear picture of what happened (to them) and how they suffered, which the Judge may decide to take into account. Victim participation should meaningfully contribute to the justice process. It must be noted, however, that this does not mean that the Court's judgment will follow the wishes of the victim. The trial Judge will, of course, take into account the law, facts, all the different interests, and concerns, including the rights of the defence and the interests of a fair trial to arrive at a sagacious decision."

24. **They submitted further that the subordinate court did not make any finding, sentence or order to warrant the revision.**

25. **The complainant's counsel in a brief rejoinder reiterated the entire contents contained in their letter dated 8th February 2021.**

Analysis and Determination

26. **The issue for determination is whether the application for revision has merit; whether the court has jurisdiction to determine the issue at hand; whether the subordinate court made any order to warrant the exercise of the supervisory and revisionary powers of this court.**

26. It is clear from the court record as reproduced herein above that the victim was not in court. Neither was his counsel.

27. **Section 362 of the Criminal Procedure Code** provides for the power of High Court to call for records. That *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.*

28. The **Constitution at Article 165** provides:

(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not 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

29. Clearly therefore this court is empowered to call for the records of the subordinate court and make any order or give any direction for the fair administration of justice.

30. In the exercise of the revisionary power under **Section 362 of the Criminal Procedure Code**;

"(1) 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 its knowledge, the High Court may—

(a)...

(b) in the case of any other order other than an order of acquittal, alter or reverse the order.

c...

2. ...

3...

4...

5..."

31. **Section 87 of the Criminal Procedure Code.** Provides that;

“In a trial before a subordinate court, a public prosecutor may, with the consent of the court or on the instructions of the DPP, at any time before judgment is pronounced withdraw from the prosecution of any person and upon such withdrawal -

*(a) if it is made before the accused person is called upon to make his defence, **he shall be discharged but such discharge of an accused shall not operate as a bar to subsequent proceedings against him on account of the same facts:***

(b) if it is made after the accused person is called upon to make his defence, he shall be acquitted”.

32. By allowing the application under Section 87(a) of the Criminal Procedure Code the subordinate court effectively made an order discharging each of the accused persons.

33. **It is correct that under Article 157(10) of the Constitution** the DPP is to act independently in the exercise of the powers conferred to him by the Constitution. It provides:

"The Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her powers or functions, shall not be under the direction or control of any person."

34. With respect to victim participation the above position is bolstered by the Supreme Court in **Joseph Lendrix Waswa vs R. [2020] eKLR** which held that:

“73. At this point, we feel compelled to make a few observations on the powers of the DPP. Article 157(1) of the Constitution establishes the office of DPP. The State’s prosecutorial powers are vested in the DPP under Article 157 of the Constitution. That office, under sub-article 10, neither requires the consent of any person to institute criminal proceedings nor is it under the direction or control of any person or authority. These provisions are also replicated in Section 6 of the Office of the Director of Public Prosecutions Act, 2013. This office is the sole constitutional office with the powers to conduct criminal prosecutions.”

35. Nevertheless, the ODPP is duty bound to be accountable and act in compliance with the relevant provisions of the Constitution and the relevant acts of parliament in discharging its mandate.

36. Under **Article 157(6)(c) of the Constitution**, the Director of Public Prosecutions may, discontinue at any stage before judgment is delivered any criminal proceedings instituted by or taken over by him, **Sub-Article 8** is explicit that: *"The Director of Public Prosecutions may not discontinue a prosecution without the permission of the court."*

37. So the power to discontinue, at any stage of the prosecution, with the permission of the court is provided by the Constitution. The requirement for permission by the court here is similar to the requirement by **Section 87 (a)** which speaks of the consent of the court. The in itself pre supposes that the court will need to be satisfied that there is good reason to allow the withdrawal.

38. This guard against the whimsical application of this power is to be found at **Article 157(11) of the Constitution** provides that:

"In exercising the powers conferred by this Article, the Director of Public Prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process."

39. As for the subordinate courts obligation when dealing with such an application from the ODPP, the bar is set by the Constitution. The court would have to be satisfied that power is not being exercised outside its boundaries: public interest, interests of justice, prevention of abuse of the legal process. There is exercise of discretion by the court which discretion must be exercised judiciously taking into account the facts of each case and in particular whether the application abides by these provisions.

40. In the circumstances of this case the issue is the participation of the victim at that stage. The Constitution of Kenya recognises that just like the accused person, the victim of the offence has rights as well. This is seen at **Article 50(9) of the Constitution** which provides:

“Parliament shall enact legislation providing for the protection, rights and welfare of victims of offences.”

41. Parliament enacted the **Victim Protection Act, No. 17 of 2014 (VPA)** which gives a definition at **Section 2** to the term **victim to mean** ‘any natural person who suffers injury, loss or damage as a consequence of an offence’

42. The Act goes on to lay down the guiding principles to be complied with in dealing with Victims at **Section 4**. For the avoidance of doubt here they are: *General Principles*

“(1) A court, administrative body or a person performing any function under this Act, shall respect and uphold the values and principles in the Constitution, and in particular, be guided by the provisions of Article 10, 27(4), 47, 48 and 49 of the Constitution.

(2) Subject to subsection (1), a court, administrative authority or person performing functions under this Act shall ensure that—

(a) the court, administrative body or person does not discriminate against any victim on the basis of race, colour, gender, age, language, creed, religion, nationality, political or other opinion, cultural belief or practices, property, birth or family status, ethnic or social origin, disability, or any other grounds;

(b) every victim is, as far as possible, given an opportunity to be heard and to respond before any decision affecting him or her is taken;

(c) the victim's dignity is preserved at all stages of a case involving the victim, from the pre-trial to post-trial phase;

(d) every victim is addressed in a manner appropriate to his or her age, intellectual development, and is spoken to and allowed to speak in his or her language of choice, or through an interpreter if necessary;

(e) every victim is treated in a manner which takes into account his or her cultural values and beliefs; (f) every victim is protected from secondary victimization in all informal, administrative and judicial proceedings relating to the victim;

(g) every victim is accorded legal and social services of his or her own choice and if the victim is a vulnerable victim within the meaning of this Act, then he or she shall be entitled to legal and social services at the State's expense;

(h) vulnerable victim is entitled to contact his or her family or any primary care giver;

(i) the victim's dignity is upheld at all times;

(j) the victim's cultural values and beliefs are respected;

(k) the victim is not discriminated; and

(l) the victim is protected from victimization of any sort.”

43. In addition it sets out the rights of the victim during the trial process at **Section 9**. These include the right to;

“— (a) be present at their trial either in person or through a representative of their choice;

44. **Section 20** provides for the right of the victim to convey her views to the appropriate authorities in the criminal justice system. It states ; **Right to submit information**

“(1) A victim has a right to submit any information for consideration to the —

(a) police or prosecution on a decision whether or not to lay a charge, or to appeal or withdrawal;

(b) court during plea bargaining, bail hearing and sentencing;

(c) Advisory Committee on the Power of Mercy established under the Power of Mercy Act, 2011 (No. 21 of 2011), on the release or pardon of a convict.”

45. This position is also to be found in the **United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)**.

“6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

(a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

(b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system.”

46. Again at **Article 68(3)** of the **Rome Statute** where it provides:

“Protection of the victims and witnesses and their participation in the proceedings

3. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.”

47. It is clear that the issue here is not the participation of counsel for the victim in the decision to prosecute. It is about the obligation of the ODPP with respect to the rights of the victim in the criminal trial. It is about the obligation of the trial court to uphold the rights of that victim at every stage bearing in mind the warning about any prejudice against the accused person.

48. It is clearly evident from the record that the Victim herein was represented all along in the matter. Mr. Masinde or someone holding his brief would appear. It is also evident that no effort was made by the prosecution, to inform the victim of their intention to withdraw the charges, so that the Victim could exercise his right to avail information for the consideration of the court, yet this is an express provision of the Victims Protection Act. The argument by prosecution and the accused persons that the victim does not exercise prosecutorial powers is unsustainable in view of the clear provisions of the law. So are the submissions by the accused person’s counsel that a criminal trial is not like a civil case where mentions are given and served. Our Constitution changed all that when it provided for equality before the law, and fair trial for both the victim and the accused person. To take that position is akin to *kuturudisha Misri* (as the saying goes ‘taking us back to Egypt’). Now we have active case management and pre trials even in criminal cases. We are as the justice system obligated to provide ways and means where parties and witnesses in all categories of cases can access the requisite information as that is core to access to justice. The Victims Protection Act speaks clearly that it is the obligation of the state an agency to ensure that the Victim is informed of what is going on about their case. The victim stopped being a spectator, the silent partner in their own case and became an active participant and party albeit in a constitutionally acceptable limited way. The Victim is not challenging the Prosecution’s mandate to prosecute. The victim is simply holding the prosecution and court accountable for failing to adhere to clear provisions of the law. In our Constitutional dispensation, the rights of the victim are no less than those of the accused person. The mandate of the ODPP includes compliance with the law as the powers conferred both by statute and the Constitution must be exercised in adherence to the same Constitution.

49. The subordinate court had the duty to uphold the law, and in this case in considering the application by the prosecution the learned magistrate was required to consider the views of the victim before either allowing or disallowing the application.

50. The prosecution’s submission that the applicant was present and did not object to the application is not supported by the record. There is nothing on record to show that the Victim or his counsel were present. It is not even clear whether all the accused persons were present. The reason for the application to withdraw is vague: What are these requirements that were not complied with, and by whom? In **Republic vs Enock Wekesa and Michael B. Watah (2010) eKLR**, *Hon. Koome J*, (as she then was) observed:

“Surely if the case were to be terminated, should the complainant not be given a reason? Should the court that gives the leave to terminate the proceedings be a mere rubberstamp? Is asking questions that will satisfy the court that there is no abuse of process interference with the powers of the Director of Prosecutions? The criminal charges that are before the learned trial magistrate involve both the accused persons and the complainants who were the victims. By the trial Magistrate seeking for reasons so as to satisfy herself that there is no abuse of the legal process cannot be said to overstep on the powers of the Director of Prosecutions... The constitution provides that public interest, the interest of justice and abuse of the legal process be protected, this is the duty of the trial court.”

51. Applied to this case, the learned magistrate was obligated to ensure that the victim was aware of the application for the withdrawal and to get reasons. The judge declined to exercise her powers for the reason that it was proper for the trial court to demand reasons for the withdrawal and the prosecution to act within the parameters of the Constitution.

“For the foresaid reasons, I do not think I should exercise my powers to set aside the orders of the learned trial magistrate. Justice is open, transparent and should be responsive and accountable. These are not fashionable terms any more, but a reality under the Constitution of Kenya 2010. If the state wants to exercise the power of entering whatever writs no one will stop them as long as they meet the threshold of public interest, interest of justice and ensure non abuse of the court process.”

52. This case cries out for the exercise of this court’s supervisory and revisionary powers as set out in the **Constitution** and the **Criminal Procedure Code**. The procedure followed in during the hearing of the application did not serve the interests of justice as it completely left out the victim contrary to the requirements of both the Constitution and statute. It is clearly evident that the orders given by the learned magistrate on the 15th October 2020 did not comply with the Victims Protection Act, and the Constitutional values enshrined under **Article 159 and 157(11) of the Constitution**.

53. To that end the application has merit as the order as issued is irregular, and its propriety in the circumstances, questionable.

54. What orders are available?

55. The court is empowered to give any order or give any direction it considers appropriate to ensure the fair administration of justice. Under the Criminal Procedure Code this includes the reversal of the order by the subordinate court.

56. In the upshot the order of withdrawal by the prosecution and discharge of the accused persons made on 15th October 2020 is set aside.

57. The charges against the accused persons be and hereby are reinstated.

58. The accused persons and the victim and their counsel are to present themselves before the Chief Magistrate on or before the 6th October 2021 for directions as to the hearing of the application for withdrawal of the matter or any other directions as may be necessary.

59. The accused persons are represented in these proceedings as respondents. In default of appearance of any of the accused persons a warrant of arrest to issue to be effected by the appropriate Officer Commanding Station (OCS) through the office of the DPP Nakuru.

60. Mention before the Chief Magistrate Nakuru on 6th October 2021 if the accused persons will not have availed themselves earlier.

61. Orders Accordingly.

DATED, SIGNED AND DELIVERED VIA EMAIL BY CONSENT OF COUNSEL THIS 30TH DAY OF SEPTEMBER, 2021.

MUMBUA T MATHEKA

JUDGE

Edna Court Assistant

Ms Murunga for state

Mr Bowry for the Victim

Chimei & Co Advocates for the accused persons