



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**CRIMINAL REVISION NO. 20 OF 2019**

**MARIUS CHERUIYOT RONO.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

[1] On behalf of the Applicant, **Marius Cheruiyot Rono**, this application for revision was herein filed by M/s **Wambua Kigamwa & Company Advocates** on **25 April 2019** on the grounds that the Applicant is being subjected to parallel criminal proceedings before the lower court at **Kapsabet Law Courts** and therefore that his rights under **Articles 49 and 50** of the **Constitution** are either being violated or threatened with violation unless the Court, in its supervisory jurisdiction intervenes. Counsel for the Applicant explained in his letter dated **24 April 2019** that the Applicant was charged with robbery with violence contrary to **Section 296(2)** of the **Penal Code** and was arraigned before the lower court on **28 November 2018** in **Kapsabet SPM's Criminal Case No. 4741 of 2018: Republic vs. Marius Cheruiyot Rono** in respect of the same facts that were the subject of an appeal; notwithstanding that the High Court had ordered a retrial in the appeal.

[2] Accordingly, Counsel sought that, in the exercise of its criminal revision jurisdiction as conferred by **Sections 362, 364 and 365** of the **Criminal Procedure Code, Chapter 75** of the **Laws of Kenya**, the Court be pleased to call for and examine the record of the criminal proceedings before the Magistrate's Court for purposes of satisfying itself as to the correctness, legality or propriety of the findings and orders recorded therein and as to the regularity of the proceedings themselves on the following grounds:

[a] Whether the opening of a new court file and admission of the charge in the matter in question while there is a similar charge in **Kapsabet SPM's Criminal Case No. 3591 of 2016: Republic vs. Marius Cheruiyot Rono** is a violation of the right to a fair trial under **Article 50** of the **Constitution of Kenya 2010** and whether it amounts to double prosecution;

[b] Whether the opening of this file is a violation of the Order of the Superior Court made on **19 November 2018** in **Eldoret High Court Criminal Appeal No. 8 of 2018: Marius Cheruiyot Rono vs. Republic**, which directed a retrial of the appellant in **Kapsabet SPM's Criminal Case No. 3591 of 2016: Republic vs. Marius Cheruiyot Rono**;

[c] Whether the trial in this matter is a violation of the Orders of the Superior Court in **Eldoret High Court Criminal Case No. 8 of 2018: Marius Cheruiyot Rono vs. Republic** which had directed that the appellant be presented for retrial in the lower court on **3 December 2018**;

[d] Whether the court could proceed with the retrial of the accused without the original file and judgment in the appeal having been transmitted to it;

[e] Whether the order to release exhibits not produced in this file was made without jurisdiction;

[f] Whether the decision to deny the accused bail is consistent with the provisions of **Article 49** of the **Constitution of Kenya, 2010** taking into account the reasons advanced by the court in the ruling.

[3] Accordingly, the lower court record of **Kapsabet SPM's Criminal Case No. 4741 of 2018** was called for and it does confirm that a new file was opened by the lower court in respect of the same charge of robbery with violence that was the subject of **Eldoret High Court Criminal Appeal No. 8 of 2018**. A copy of the Judgment in the appeal has been annexed to the application and there is no gainsaying that the appellate court made an order for a retrial in the following terms:

**“It is further ordered that there be a retrial of the Appellant by a different magistrate at Kapsabet Law Courts other than Hon. M.C. Kesse, SRM; and that the Appellant shall remain in custody until his presentation before the lower court on 3**

**December 2018 for further orders.”**

**[4]** Needless to say that a retrial ought to be in the principal file that gave rise to the appeal. It was therefore premature and erroneous for the lower court to proceed and take the Appellant’s plea afresh in a totally different case file before the appointed date of **3 December 2018** and purport to make orders for the release of exhibits which had not been produced in the subsequent file. Accordingly, to correct the anomaly, it is hereby ordered that:

**[a]** The Charge, plea, proceedings and orders issued in the new file, namely **Kapsabet SPM’s Criminal Case No. 4741 of 2018** be and are hereby nullified; and that the case file be closed forthwith;

**[b]** The retrial shall proceed in terms of the orders of the appellate court in **Eldoret High Court Criminal Appeal No. 8 of 2018** and shall be conducted in the principal file, being **Kapsabet SPM’s Criminal Case No.3591 of 2016.**

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 9<sup>TH</sup> DAY OF AUGUST 2019**

**OLGA SEWE**

**JUDGE**