



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
CRIMINAL REVISION NO. 8 OF 2011

ISAAC KIPNGETICH BETT & 8 OTHERS APPLICANTS

VERSUS

REPUBLIC RESPONDENT

REVISION

Messrs Nyaingiri & Company Advocates have sought revision in Criminal Case Number 793 of 2010. The orders or proceedings sought to be revised in the case have not been alluded to. Instead, the said advocates have set out in their request for revision a litany of grounds which purportedly constitute their or their clients' grievances in the case.

This court has power under **section 362** of the **Criminal Procedure Code, Chapter 75** of the Laws of Kenya, to 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.

Under the provisions of **Section 364(1)** of the **Criminal Procedure Code**, this court also has power to exercise any of the powers conferred on it as a Court of Appeal by **Sections 354, 357 and 358** of the **Criminal Procedure Code** and to alter or reverse orders other than orders of acquittal.

At the end of the litany of grievances set out in paragraphs 1 to 13 of the request for review by advocates Nyaingiri & Company, the latter have sought what they term as "*intervention*" and prayed for "*revision of proceedings*" and "*revision of the ruling and setting it aside*" and transfer of the case to another court for hearing and determination.

The allegations in paragraph 1 alleging that the trial court shifted the burden of proof to the accused have not been buttressed by any evidence. They are not borne out by the record which I have perused. Nor do the allegations in paragraph 2 relating to the substitution of the charge hold any water.

The allegations in paragraph 3 have no basis. They are wild. It is difficult to imagine they are made by a firm of advocates. Needless to state, the State has the conduct of prosecution of criminal cases. It is not the duty of the court to direct the State on how to do its work. Messrs Nyaingiri & Company allege that only persons who are of Luhya tribe are holding the various offices alluded to! The trial court is not the appointing authority to those offices. The allegations are in bad taste. They are also baseless. They do not exemplify seriousness or professionalism on the part of the advocates concerned. They are unworthy of an advocate of the High Court. I cannot but deprecate the same.

The allegations in paragraphs 4,5,6,7,8,9,10,11 and 12 are not borne out by the record either.

What emerges from the so called request for revision is a manifest intention on the part of the said advocates to throw the trial court off balance through use of irritating and spurious allegations in the hope that the trial court will surrender the case to another court. In short, the said advocates appear intent on trying to get the case transferred to another court notwithstanding that there is no ground or basis for transfer. The said advocates have resorted to unorthodox and crude methods that are not befitting of an advocate of the High Court. It is salient that there is no shred of evidence to support any of the unfounded allegations by Nyaingiri & Company. The request demonstrates complete lack of competence and professionalism on their part. It is also mischievous. It amounts to abuse of court process and must be deprecated.

As the request for revision has no substance, it is dismissed. The trial shall proceed to hearing in the trial court.

DATED at KERICHO this 13th day of April, 2011

G.B.M. KARIUKI, sc
RESIDENT JUDGE

COUNSEL APPEARING:

Mr. T.M.O. Nyaingiri Advocate, instructed by Messrs Nyaingiri & Co.
Advocates appeared for the Applicants