



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Revision Case 24 of 2004

PAUL KIPRONO ARAP MAINAAPPLICANT

VERSUS

**REPUBLIC
RESPONDENT**

ORDER ON REVISION

The applicant was charged before Kericho Children’s Court vide Kericho PM Criminal case No. P & C No. 77 of 2003 for the offence of child neglect contrary to section 127 (2) of the Children Act, 2001. The particulars of the offence were that, the applicant being the grandfather of Sharon Chebet, Dorine Cherono and Mary Chepkirui, all being children aged less than 13 years, neglected the said children by chasing them away from shelter after the death of their father. The applicant pleaded not guilty to the charge and thereafter sought to invoke the revisionary jurisdiction of this court under the provisions of section 362 of the Criminal Procedure Code.

The grounds which the applicant wishes to have the proceedings against him terminated are stated as follows:

- “(a) The prosecutor, one named Jane Rono, who is a Children’s Officer, is incompetent,*
- (b) Prosecution of Criminal Cases is the domain of the Attorney General as provided for under section 85 of the Criminal Procedure Code Chapter 75 of the Laws of Kenya.*
- (c) The person who signed the charge sheet is not the magistrate and is also incompetent*
- (d) The charge read to the accused is incurably defective*
- (e) The whole proceedings are irregular and is a clear manifestation of an abuse of our legal system.*
- (f) The accused was denied (the right) to cross-examine a witness”.*

It is evident from the grounds set forth by the applicant that he is essentially challenging the authority of the Children’s Officer to, in the first instance, charge him with the offence of neglecting children under the Children Act, and secondly, for prosecuting the case against him in court. The applicant has relied on the oft quoted case of Elirema –vs- Republic CA Criminal Appeal no. 67 of 2002 (unreported), where the Court of Appeal declared criminal proceedings prosecuted by a police officer below the rank of an assistant Inspector of Police as a nullity. The Court of Appeal declared such criminal proceedings to be a

nullity pursuant to the provisions of section 85 (1) of the Criminal Procedure Code which forbids any police officer below the rank of an assistant Inspector of Police from prosecuting a criminal case in a magistrate's court.

In criminal cases filed under the Children Act involving children, the director of children's services and the children officers appointed under the Act, are authorised under section 37 (1) (h) to:

“Provide all necessary assistance to the judicial process, to the intent that court orders in relation to children which require supporting, social and administrative arrangements may achieve fulfilment”.

It is therefore clear that a Children's Officer, unlike a police officer of a rank lower than that of an assistant Inspector of Police under the Criminal Procedure Code, has power under the Children Act to prepare the charge and prosecute any person who has committed an offence under the said Act. It is therefore clear that the applicant's objection to the Children's Officer's authority to prosecute a case filed under the Children Act is misconceived. The Children's Officer has power under the Children Act to prosecute an offender. I therefore find no merit with the applicant's objection to the jurisdiction of the Children's Officer to prosecute a case in the said Children's Court.

As regards whether the charge facing the applicant is defective, the applicant is required to, in the first instance challenge the charge before the trial court. If he is overruled, he is required to wait until the conclusion of the case, and depending how the case is determined, he may put forward the aspect of the defectiveness of the charge as a ground of appeal. He cannot at this preliminary stage seek to frustrate the hearing of the criminal case facing him.

I therefore find no merit with grounds presented before this court by the applicant challenging the propriety of the Children's Officer in prosecuting the criminal case against him. The subordinate court's file is hereby ordered returned to the Kericho Principal Magistrate's Court for hearing and appropriate determination.

It is so ordered.

DATED at NAKURU this 18th day of SEPTEMBER 2008

L. KIMARU

JUDGE