



**DPP v Abdi alias Afro & 2 others (Criminal Revision
E021 of 2024) [2025] KEHC 3438 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3438 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MANDERA
CRIMINAL REVISION E021 OF 2024
JN ONYIEGO, J
MARCH 20, 2025**

BETWEEN

DPP APPLICANT

AND

OMAR FARAH ABDI ALIAS AFRO 1ST RESPONDENT

ABDIFATAH IBRAHIM GEDI 2ND RESPONDENT

ADAN HASSAN SHEIKH ALIAS ALI SHABAAN SHINIYO .. 3RD RESPONDENT

RULING

1. The application for determination herein is dated 11.12.2024 wherein the applicant seeks for orders that:
 - i. Spent.
 - ii. This Honourable Court be pleased to issue an order of stay of the orders of 09.12.2024 by Hon. C. Omondi marking the prosecution case as closed in Mandera MCCR/E133/2024 pending the hearing and determination of this application.
 - iii. This Honourable Court be pleased to review/revise the orders of 09.12.2024 by Hon. Omondi in Mandera MCCR/E133/2024.
 - iv. This Honourable Court be pleased to issue any other orders that it deems fit and just in the circumstances.
2. The application is hinged on the fact that on 25.03.2024 at around 1030 hrs, a suspected Al- Shabaab improvised electronic device exploded at Fish Point Hotel within Mandera Town killing several people including police officers and injuring many others. That after a rigorous process of gathering evidence, the respondents were arrested and charged with offences under the Prevention of Terrorist



Act, Immigration Act and the [Penal Code](#). It was urged that the prosecution had made strides in availing witnesses in court and were still willing to prosecute its case to its logical conclusion. That the respondents are linked to a terror group keen on frustrating the case and use of threats to the prosecution witnesses. It was thus prayed that this Honourable Court do review/revise the trial magistrate's orders of 09.12.2024 in Manderu MCCR/E133/2024 and grant the orders sought.

3. The 1st and 2nd respondents in opposing the application filed a replying affidavit sworn on 19.02.2025 deposing that it did not meet the threshold for the orders sought in the application. That the application was filed in bad faith and further, the applicant did not present before the court any extraneous factors to support the grant of the orders sought. They urged this court to dismiss the application to re-open the prosecution's case.
4. The application was canvassed orally. The prosecution while relying on their application and the supporting affidavit annexed thereon, urged this court to grant the orders sought. The learned prosecutor faulted the trial magistrate for closing its case prematurely before it could fully present all its witnesses and prosecute its case to the logical conclusion. This court was urged to revise and set aside the orders of the trial court and substitute the same with an order directing it to reopen the case as a matter of public interest.
5. The 1st and 2nd respondents on the other hand submitted that despite being released on bond, they had suffered attending courting religiously while the prosecution sought for endless adjournments. They urged that the application be dismissed.
6. I have considered the application herein and the response thereof. In my view, the question to be answered is whether this court should revise the orders made by the trial magistrate in MCCRE 133 OF 2024 on 09.12.2024.
7. The respondents were charged with the following offences:
8. Count I: Commission of a terrorist act c/sec 4 of the Prevention of Terrorist Act, 2012. The particulars being that, on 25.03.2024 at around 1036 hrs at Fish Point hotel in Manderu Township of Manderu East Sub County within Manderu County they jointly attacked Fish Point Hotel by use of improvised electronic devices thereby fatally injuring three police officers, one civilian, seriously injuring more than 15 others and completely destroyed the said hotel.
9. Count II: Collection or provision of property and services for commission of terrorist acts c/sec 5 (1) (a)(b)(c) as read with section 5 (2) of the Prevention of Terrorist Act, 2012. The particulars were that on 25.03.2024 between 1000hrs and 1036hrs at Fish Point hotel in Manderu Township of Manderu East Sub County within Manderu County they jointly provided property and services namely; means of transport through motor vehicles of registration numbers KDA 804N, KDG 304M and a donkey cart to themselves, others at large and improvised electronic devices to Fish Point hotel where they jointly fatally injured three police officers, one civilian, seriously injuring more than 15 others and completely destroyed the said hotel.
10. Count III: Facilitation of Terrorist acts c/sec 9A of the Prevention of Terrorist Act, 2012. The particulars were that on 25.03.2024 between 1000hrs and 1036hrs at Fish Point hotel in Manderu Township of Manderu East Sub County within Manderu County they jointly facilitated transport by use of motor vehicles of registration numbers KDA 804N, KDG 304M and a donkey cart to themselves, others at large and improvised electronic devices to Fish Point hotel where they jointly fatally injured three police officers, one civilian, seriously injuring more than 15 others and completely destroyed the said hotel.



11. Count IV: Conspiracy to commit a felony contrary to section 393 of the [Penal Code](#). The particulars of the offence were that on 25.03.2024 at around 1036hrs at Fish Point hotel in Mandera Township of Mandera East Sub County within Mandera County they jointly conspired together to commit a felony namely a terrorist act by use of improvised electronic devices thereby fatally injuring three police officers, one civilian, seriously injuring more than 15 others and completely destroyed the said hotel.
12. Count V: Entering Kenya through a place not designated as a place of entry/exit contrary to section 15(2) (a) as read with section 57 of the Kenya Citizenship and Immigration Regulations, 2012. Particulars being that Adan Hassan Sheikh alias Ali Shaban Shiniyo on diverse dates between the years 2022 and 2024 at Mandera Township location within Mandera East Sub County of Mandera County of the Republic of Kenya he was found having entered Kenya through Malka Suftu border which is not a designated point of entry of exit.
13. Count VI: Failing to report entry to the Immigration Office contrary to Regulation 17(1) (a) as read with section 57 of the Kenya Citizenship and Immigration Regulations, 2012. Particulars being that Adan Hassan Sheikh alias Ali Shaban Shiniyo on diverse dates between the years 2022 and 2024 at Mandera East Sub County of Mandera County of the Republic of Kenya being an Ethiopian national he failed to report entry to the nearest immigration office while crossing from Suftu Ethiopia to Mandera Kenya as required by the law.
14. Count VII: Being unlawfully present in Kenya c/sec 53(1) (j) as read with section 53(2) of the [Kenya Citizenship and Immigration Act](#). Particulars were that Adan Hassan Sheikh alias Ali Shaban Shiniyo on 18.04.2024 at around 1845 hrs at Choma Zone Hotel in Mandera Township location within Mandera East Sub County of Mandera County being an Ethiopian national was found unlawfully present in Kenya without valid passport or permit/visa authorizing him to stay in Kenya.
15. Count VIII: Giving false information to a person employed in a public service c/sec 129(a) of the [Penal Code](#). Particulars of the offence were that Adan Hassan Sheikh alias Ali Shaban Shiniyo on 18.04.2024 at around 1845hrs at Mandera Police Station in Mandera East Sub County within Mandera County he gave false information to No. 109031 PC Elijah Nakeel. No. 108239 PC Emmanuel Chacha and Mandera report office personnel that he was Ali Shaban Shiniyo a fact he knew to be false.
16. Having been arraigned in court and charges read to them, they pleaded not guilty in respect to Counts 1,2,3 and 4. A plea of not guilty for the 3rd respondent in Counts 5,7 and 8 was equally entered. On Count 6, the 3rd respondent conceded it to be true.
17. The matter then proceeded to full trial in respect of the disputed charges. However, at some point, the court ordered prosecution case closed after their application for adjournment to call more witnesses was rejected and court proceeded to deliver a ruling thereby acquitting the accused persons for lack of sufficient evidence. It is this order of the trial court refusing to adjourn the case that prompted this revision application seeking to set aside the trial court's order and reinstate the case so as to allow prosecution an opportunity to adduce further evidence.
18. The constitutional provision on supervisory jurisdiction of the High Court to make orders of revision is aptly captured under Article 165 (6) and (7) of [the Constitution](#) of Kenya, 2010 which stipulates that:
 - “(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising 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 the 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.”

19. Statutorily, Sections 362 and 364 of the *Criminal Procedure Code* empower this Court to deal with the issue at hand and the said sections provide as follows: “

362. 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”

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- 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 his 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.
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.”

20. This Court acknowledges that under Article 157 of *the Constitution*, the powers to institute criminal proceedings is conferred on the Director of Public Prosecutions. The Director of Public Prosecutions may also take over criminal proceedings instituted by other persons or institutions. In addition, the Director of Public Prosecutions may also discontinue criminal proceedings commenced by his office or by any other person, with leave of the court.

21. I have perused the record and found that the trial magistrate on 09.12.2024 made an order that the prosecution’s case be closed. The trial court record shows that the plea in this matter was taken on 02.05.2024. The court then proceeded to determine the issues of bond/bail and on 22.05.2024, the trial court directed that the respondents be supplied with witness statements and a mention date for pre-trial set to be on 05.06.2024.

22. On 05.06.2024, the respondents informed court that they had not been supplied with witness statements thereby prompting a reply from the prosecution counsel to the effect that the documents were bulky and, he need time to make copies of the said documents. The court thus confirmed that the respondents were supplied with the said documents thus hearing was confirmed for 29.07.2024.

23. On 29.07.2024, the matter came up for hearing but the prosecution counsel stated that he thought the same was for mention for directions and therefore, the trial court noted that the ruling in the High Court was delivered on 24.07.2024. That the High Court ruling granted the 1st and 2nd respondents an opportunity to be released on bail/bond. The court further noted that the matter was adjourned at the request of the prosecution and a new hearing date set for 21.08.2024.

24. On 21.08.2024, the matter was listed for hearing but the prosecution’s counsel stated that he was not ready to proceed on grounds that there were reports that he expected from Nairobi and so, he sought for an adjournment. The court allowed the adjournment at the request of the prosecution and set a new date for 10.09.2024.



25. On 10.09.2024, the prosecution counsel confirmed that he was ready to proceed with one witness. The hearing as scheduled proceeded and a further hearing date was set for 25.09.2024.
26. On 25.09.2024, the matter came up for hearing and the prosecution counsel confirmed that he had two witnesses and that he was ready to proceed. Indeed, the matter proceeded and at the instance of the prosecution again, an adjournment was sought to produce more witnesses. The adjournment was allowed and a new date was set for 09.10.2024.
27. On 09.10.2024, the matter came up for hearing but the prosecution informed the court that it was not ready to proceed as the OC ATPU informed him that one PC Nyaga went on a transfer and efforts to find him were proving futile. That he sought to appear virtually. Upon reaching 3.37p.m., the prosecution counsel informed court that in as much as the virtual hearing was to proceed at 2.00 p.m., it was already 3.38 p.m. and that the said officer had been called for work. Counsel thus sought for a later date. The trial court was gracious enough and allowed the sought adjournment and a new hearing date was set for 11.02.2024.
28. On 11.10.2024, the prosecution confirmed that it had one witness and it was ready to proceed. Later in the day, the prosecution counsel informed court that he had identified one witness but unfortunately, the alleged witness was no longer picking his calls. The accused persons complained that the matter had been adjourned several times but the court in allowing the adjournment, stated that the same was marked as last adjournment. A new hearing date was set for 02.12.2024.
29. On 02.12.2024, the prosecution counsel. sought for another adjournment urging that he did not have the police file. In as much as the respondents vehemently opposed the sought adjournment, the trial court reluctantly allowed the same thereby marking it as the last adjournment. A new hearing date was thus set for 06.12.2024.
30. On 06.12.2024, the matter came up for hearing. Prosecution counsel informed court that he did not have the police file as the ATPU in charge had travelled. He sought for summons to issue to the acting in charge of the ATPU to come to court and explain why the witnesses were not in court. He further urged the trial court to grant a further adjournment. The respondents opposed the said application for adjournment and the court rendered its ruling closing the prosecution's case for having failed to call witnesses despite the last adjournment granted.
31. I have laid bare the history of this matter and having in mind that the [Criminal Procedure Code](#) foresees a criminal trial being heard on a daily basis to its conclusion with limited adjournment, a cursory look of the same shows that indeed, the prosecution was given many chances to prosecute its case in vain.
32. Section 205 (1) of the [Criminal Procedure Code](#) provides that:
 1. The court may, before or during the hearing of a case, adjourn the hearing to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties or their respective advocates then present, and in the meantime the court may allow the accused person to go at large, or may commit him to prison, or may release him upon his entering into a recognizance with or without sureties conditioned for his appearance at the time and place to which the hearing or further hearing is adjourned:

Provided that no such adjournment shall be for more than thirty clear days, or, if the accused person has been committed to prison, for more than fifteen clear days, the day following that on which the adjournment is made being counted as the first day.



33. Having the above in mind, it is therefore mandatory that adjournments are only granted where they are deserved and not dished in every other case or situation or when a party so wishes to request. It is not a right conferred on any party in a given court proceeding.
34. In this case, it is quite evident that all the adjournments occasioned in the process of hearing this matter was caused by the applicant herein. The last reason preferred by the prosecution in seeking for an adjournment was that the ATPU in charge had travelled and therefore the court was asked to issue summons to the acting in charge to come to court and explain why witnesses were not in court. At this juncture, the question that I grapple with is whether the said reason was good enough to grant an adjournment. I say so for the reason that it was not indicated whether the said in charge had left with the police file or whether he did not bond the witnesses or for whatever reason why the investigating officer failed to execute his duties.
35. Having in mind the previous occasions that the prosecution had sought for adjournments and all were allowed, it is my humble consideration that courts cannot be used to keep proceedings pending forever. I say so with a clear mind noting that this matter actively began on 02.05.2024 and a year down the line, the prosecution had not completed prosecuting its case and no good reason(s) were given for the same.
36. In the case of *R vs Omar Mwinyi Musimba* (2017) eKLR the court observed that: “A judicial officer is therefore bound from the day the criminal case (is) registered in court to conceive a timetable and chart a route that would enable him expeditiously meet the core and overriding objectives of the court. In setting out to execute active case management the court as the driver gets foresighted and envisages possible pit falls and impediments to its core mandate, to defeat delay and eradicate ‘case backlog’. It is therefore critical to set a timetable for surmounting such pitfalls and impediments or just dealing with them at an appropriate time noting that some of those issues considered pitfalls may have a determinant effect on the case as to be able to conclude it.”
37. Its trite that this Court’s supervisory jurisdiction in revision should never be used to interfere with the discretion of the magistrate’s courts as the High Court does not superintend over the magistrate’s courts in their exercise of judicial discretion. Seeking guidance in the case of *Republic vs John Wambua Munyao & 3 others* [2018] eKLR, (Odunga J as he then was) stated that: “... the powers of revision under section 362 of the *Criminal Procedure Code* are only to be invoked to enable this Court satisfy 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 subordinate court...”
38. In conclusion, it is my finding that the trial court acted properly in exercising its discretion, the same did not amount to incorrectness, illegality or impropriety on its part to warrant this Court exercising its revisionary powers to disturb the decision reached after considering all circumstances of the case. The application is thus dismissed for want of merit.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 20TH DAY OF MARCH 2025

J. N. ONYIEGO

JUDGE

