



**Dennis v Republic (Miscellaneous Criminal Application
E145 of 2024) [2025] KEHC 2893 (KLR) (11 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2893 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
MISCELLANEOUS CRIMINAL APPLICATION E145 OF 2024**

**DR KAVEDZA, J
MARCH 11, 2025**

BETWEEN

OMOSA KIBANGA DENNIS APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant is charged with the offence of stealing by servant contrary to section 268(1) as read with section 281 of the *Penal Code*. The particulars as per his first charge sheet were that the applicant, on diverse dates between September 2016 and March 2019 at Ngong Road in Kilimani area within Nairobi County, was alleged to have stolen Kshs. 1,676,954 the property of Secureman Services Limited which came into his possession by virtue of employment.
2. During the applicant's trial, the prosecution applied to amend the charge sheet, where the charge and its particulars remained unchanged, except for a reduction in the alleged amount stolen, which was amended to Kshs. 906,870. The court granted the application.
3. Aggrieved by this decision, the applicant has filed the present application seeking a revision of the trial court's order allowing the amendment of the charge sheet. The averments made in support of the application are that Following the Applicant's plea the trial commenced, and three witnesses had already testified. During the trial, the Applicant engaged in negotiations with the complainant for an out-of-court settlement, pursuant to which the Applicant paid Kshs. 900,000 towards the alleged stolen amount.
4. However, on 3rd July 2024, the Respondent amended the charge sheet, charging the Applicant afresh with stealing Kshs. 906,870, property of Secureman Services Limited, which allegedly came into his possession by virtue of his employment. The amendment sought to separately charge the Applicant



with the balance of the money from the initial charge sheet dated 23rd April 2019, despite both sums arising from the same transaction.

5. The offence in question is indivisible, and given that the Applicant had already partially settled the alleged sum as part of an agreed verbal settlement, the subsequent charge amounts to an abuse of the criminal justice system for the enforcement of a civil claim, which is impermissible in law. The amendment ought to have been summarily rejected, as it contravenes due process and is contrary to established legal principles governing criminal prosecutions.
6. The law does not envisage a scenario where the prosecution amends a charge sheet to recover an unpaid balance following out-of-court negotiations. The amendment on 3rd July 2024 constitutes a violation of the Applicant's right to a fair trial, contrary to Article 50 of *the Constitution*. This Honourable Court has unfettered discretion under Section 362 of the *Criminal Procedure Code* to review and rectify this procedural irregularity. The trial court erred in admitting the amended charge sheet without considering the legal and factual circumstances of the case, resulting in a miscarriage of justice.
7. The respondent did not file a response to the application despite being given an opportunity to do so.
8. The application was canvassed by way of written submissions which have been duly considered. The issue for determination is whether the applicant should be granted the revisionary orders sought.
9. The power of this court in its revisionary jurisdiction is founded under Section 362 of the *Criminal Procedure Code* (Cap 75) Laws of Kenya which provides that:

The High Court may call for and examine the record of any criminal proceedings before any subordinate court to 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 such subordinate court.
10. On the merits of the application, the applicants seek a review of orders of the trial court issued on 17th July 2024 allowing an amendment to the charge despite an ongoing out-of-court settlement. The applicant laments that the trial court erred in admitting the amended charge sheet, warranting this Honourable Court's intervention under Section 362 of the *Criminal Procedure Code*.
11. The High Court has no jurisdiction to micro-manage a trial. If anything, the policy of the law should be to permit a trial to proceed without interruption or interference from any quarter. In *Joseph Nduvi Mbuvi v Republic* [2019] eKLR which related to an application for revision of an order made by the trial court in the course of a trial, Odunga J took the view that interlocutory appeals and revisions are not limited by the *Criminal Procedure Code* to the final adjudication of a matter. With respect applications for revisions provided for under section 364 of the *Criminal Procedure Code*, he stated that:

“ 13. From the foregoing it is clear that the High Court cannot exercise revisionary jurisdiction in an order of acquittal. It may however exercise the said jurisdiction in case of a conviction or in any other order.

14. It is, however my view that the jurisdiction should not be invoked so as to micro-manage the Lower Courts in the conduct and management of their proceedings for the simple reason that if every ruling of the Lower Court and which went against a party were to be subjected to the revisionary jurisdiction of the Court, floodgates would be opened and the Court would be inundated with such applications thus making it practically impossible for the Lower Courts to proceed with any case to its logical conclusion.”



12. In *Bryan Yongo vs Republic*, Criminal Revision No. 147 Of 2007, Ojwang J. (as he then was) emphasized the importance of continuity of the trial process in any ongoing case. He said;

“Continuity of the trial process may not be unnecessarily interrupted by applications to the High Court alleging defective procedure, in respect to directions which will, in any event, culminate in the merits of the judgment itself.”
13. The High Court must exercise extreme caution when entertaining interlocutory appeals and revision applications, limiting its intervention to instances where the correctness, legality, or propriety of a lower court’s decision is in question. Such intervention is only justified when failure to act would result in a derogation of the constitutional rights of an accused person under Article 50(2) of *the Constitution*.
14. The power to amend charges is conferred upon the trial court by Section 214(1) of the *Criminal Procedure Code*. This power must be exercised judicially, not capriciously, with due regard to the circumstances of the case and the interests of justice. Once an amendment is made, the accused must be given an opportunity to plead to the new charge and recall witnesses for fresh testimony or cross-examination, as stipulated under Section 214(1)(ii) of the *Criminal Procedure Code*.
15. In the present case, the trial record indicates that the parties had engaged in Alternative Dispute Resolution (ADR), and the court granted time for negotiations. On 3rd July 2024, the prosecution sought to amend the charge sheet, and the Applicant did not object. Consequently, the amended charge was admitted, and on 17th July 2024, the Applicant took a plea to the revised charges.
16. The trial magistrate, in exercising discretion, duly noted the absence of objection from the accused. Whether the amendment was merited is a question for appeal, not revision. As a fundamental principle in both civil and criminal trials, a party should not be permitted to patch up its case as proceedings unfold, a principle that the trial magistrate also considered.
17. Upon review, there is no illegality, incorrectness, or impropriety in the trial court’s decision. The magistrate properly exercised judicial discretion, and any intervention by the High Court would amount to unjustified micro-management of trial proceedings. The trial court retains discretion in the conduct of proceedings, and excessive interference would impede the efficient administration of justice.
18. In the circumstances, the application is dismissed for lacking in merit. The lower court’s file is returned forthwith. The matter shall be mentioned on March 25, 2025 before the trial court.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 11TH DAY OF MARCH 2025

D. KAVEDZA

JUDGE

