



**Republic v Kimathi & 2 others (Criminal Revision 363 of 2024)  
[2025] KEHC 3595 (KLR) (24 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3595 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL REVISION 363 OF 2024  
DR KAVEDZA, J  
MARCH 24, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**DERRICK KIMATHI ..... 1<sup>ST</sup> RESPONDENT**

**STEPHEN KILONZO ..... 2<sup>ND</sup> RESPONDENT**

**GREEN WELLS ENERGIES LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The applicant filed the present application vide a letter dated 18<sup>th</sup> December 2024 seeking orders of revision from the ruling issued by the court ordering the release of the subject motor vehicle.
2. The applicant argued that under Section 177 of the *Criminal Procedure Code* (CPC), only the trial court could release exhibits after issuing directions on their production. It was submitted that the motor vehicle should not be released until charges were instituted.
3. Despite this, on 30th October 2024, the court ordered the release of the exhibits, directing that photographs be taken. The applicant contended that this order was premature and could prejudice the prosecution. Following non-compliance by the OCS Embakasi, Chief Inspector Wachira Gikonyo was summoned and stated on 2nd December 2024 that the matter was under the Regional Office-Nairobi Area.
4. On 3rd December 2024, the applicant’s counsel made an oral application to vary the previous orders. The prosecution objected, but the court proceeded to vary the orders without a representative from the regional office. The applicant sought to have the order vacated and a proper application filed before the trial court.



5. Stephen Okello Okumu, the Director of the 3rd Respondent, opposed the revision application, stating no charges had been brought against the 3rd Respondent or its directors. He asserted that the Director of Criminal Investigations was a party to the miscellaneous application and all parties had a fair hearing. A Replying Affidavit by IP Isaac Kariuki, dated 29th August 2024, had been filed, refuting claims of unrepresentation. Okumu argued that investigations had concluded, no report identified the vehicle as an exhibit, and further detention was unjustified. He maintained that photographs could serve as evidence, making continued detention unnecessary.
6. The application was canvassed by way of written submission with both parties filing theirs. The said submissions have been considered and there is no need rehash them.
7. 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.

Article 165(6) of the Constitution provides that:

The High Court has supervisory jurisdiction over the subordinate courts and over any person, body, or authority exercising a judicial or quasi-judicial function, but not over a superior court.

8. Consequently, this court has jurisdiction to entertain the application before me. In the instant application, the applicant sought a revision of the ruling delivered on 30<sup>th</sup> October 2024 releasing the motor vehicle in issue to its owner. In the premises, the key issue for consideration is the question of whether the proceedings of the lower court and the ruling can be faulted in terms of correctness, legality or propriety.
9. From the record, the trial court considered the application, the response thereto and the evidence on record. It is manifest from the foregoing that the learned magistrate reached her decision after giving due consideration to the respective positions taken by the parties before her. The applicant was therefore given opportunity to articulate its case before the ruling was delivered.
10. The applicant has attempted to challenge the application on the merits of the decision arrived at by the learned trial magistrate. For instance, the that the trial court erred by releasing the motor vehicle despite the respondent's applicant having been in the process of charging the respondents. My considered view however is that, when it comes to perceived errors in the appreciation of the facts of a particular case and the application of the law to those facts, the trial magistrate's decision can only be competently challenged on appeal.
11. The upshot is that I find nothing in the record of the subordinate court that shows there was an illegality, irregularity, or impropriety in the proceedings or the orders made by the court. In the result, therefore, I find the application for revision dated December 18, 2024 is devoid of merit and is hereby dismissed. Accordingly, the orders issued by this court on December 19, 2024 are hereby vacated. The applicant is at liberty to file the application before the trial court handling the matter.

**RULING DELIVERED VIRTUALLY THIS 24<sup>TH</sup> DAY OF MARCH 2025**



**D. KAVEDZA**

**JUDGE**

In the presence of:

Mutuma for the Applicant

Ogolla for the 3<sup>rd</sup> Respondent

No appearance for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent

Tonny Court Assistant.

