



**Republic v Chief’s Magistrate Court’s (Criminal Revision
E235 of 2024) [2025] KEHC 2605 (KLR) (11 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2605 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL REVISION E235 OF 2024
LN MUTENDE, J
MARCH 11, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

CHIEF’S MAGISTRATE COURT’S RESPONDENT

RULING

1. Thomas Sitienei (deceased) was shot and fatally wounded on 14th April, 2016. An inquest was carried out which determined the cause of death. In the result the court presided over by Hon. J. Wanjala CM, found that the suspect did not act in self defence when he shot the deceased without a justifiable cause. The court found a Kenya Forest Officer (KFS) Julius Kwamwara responsible for the death of the deceased and recommended appropriate action to be taken against him by the concerned authorities.
2. Consequently, the court ordered thus;

“ Exhibits, rifles No SHE 55177T and SHE No 11472D to be released to Kenya Forest Service Laikipia County.”
3. It is upon that background that Irene Loyatum of the office of Director of Public Prosecutions, authored a letter dated 6th December, 2021 seeking revision of the order so that the rifles would remain in possession of the DCI for purposes of further investigations and institution of charges against the forest ranger.
4. The High Court is clothed with the authority to review and revise orders/decisions of the lower court. This discretionary power is aimed at correcting errors or irregularities made so as to ensure no injustice occurs. The revisionary power is enshrined in the Constitution and Statute.
5. Article 165 (6) (7) provides thus;



- (6) 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.
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any 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.
6. Section 362 of the [Criminal Procedure Code](#) provides that;
- 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.
7. From the above provisions of law, it is noteworthy that revisionary power is vital as it upholds the rule of law. It ensures that any order made is not only correct but just.
 8. The mandate of the Directorate of Criminal Investigations includes investigations of crimes/matters referred to it. (see Section 35 of the [National Police Service Act](#)). In doing so the directorate would undertake to use the forensic experts in the department to effectively gather the evidence that must be analysed to establish who is to be indicted.
 9. To do so, the exhibits relevant to the case must be in their possession. In the instant case, the firearm (exhibit) being in possession of DCI was safely recovered and retained as an exhibit having been subjected to ballistic testing.
 10. Following the findings of the court, this is an exhibit to be produced in evidence. It cannot be returned to the owner (KFS) before the case is heard and determined. In the premises the order by the Judicial Officer was irregular and must be corrected.
 11. For that reason, I call to this court the order dated 12th November, 2021 which I quash, set aside and substitute with an order directing that Exhibits, rifles No SHE 55177T and SHE No 11472D shall continue to be held by DCI, Nyandarua North, pending institution of the charges against Forest Ranger Julius Kwamwara as directed by the court.
 12. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 11TH DAY OF MARCH, 2025.

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L.N. MUTENDE

JUDGE

