



**Otiende v Republic (Miscellaneous Criminal Application
2 of 2025) [2025] KEHC 3993 (KLR) (1 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 3993 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION 2 OF 2025**

DK KEMEL, J

APRIL 1, 2025

BETWEEN

MORRIS ONYANGO OTIENDE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. I have given due consideration to the sentiments of Hon. Ogoti (CM) Bondo dated 18/3/2025 as well as the trial court's proceedings dated 24/1/2020. It is not in dispute that the trial court's matter had proceeded to conclusion only awaiting delivery of Judgment before the accused jumped bail. The record of 24/1/2020 indicates that the matter was withdrawn under Section 87(a) of the Criminal Procedure Code and that the warrant of arrest was to remain in force.
2. Revisionary powers is donated to the High Court under Article 165 (6) and (7) of the Constitution which provides as follows:
 - (6) The High Court has supervisory jurisdiction over the subordinate courts and over every person, body or authority exercising a judicial or quasi-judicial function but not 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 or authority referred to in clause (6) and may make orders or give any direction it considers appropriate to ensure the fair administration of justice.
- 3.. It is noted that the withdrawal of the matter which was pending judgment under Section 87(a) of the Criminal Procedure Code was improper as the same had the effect of creating a conundrum in that a withdrawal under that provision at defence stage would lead to the acquittal of the accused. Indeed, that might not have been the intention of the prosecution when it made the application and that is why it sought for warrant of arrest to remain in force. On the other hand, the trial court is now in a



culdesac situation as it is unable to proceed with the delivery of the judgment as the accused has now been arrested. It is thus clear that there is some error apparent on the record. It is standard practice to leave warrants of arrest in force in matters where judgements are pending delivery so that the same could be delivered once the accused person shows up or warrant is executed. The trial court went into error by accepting the prosecution's request to withdraw the matter under Section 87(a) of the *Criminal Procedure Code* when the same was not available. That being the position, I find that this court must rectify the anomaly and issue the appropriate orders and directions as follows: -

1. The orders of the trial court made on 24/1/2020 are hereby set aside and/or vacated and substituted with an order that a warrant of arrest to remain in force pending delivery of judgment.
2. As the accused has been arrested, he should be presented before the trial court for delivery of judgment.
3. This revision file is now closed.

DATED AND DELIVERED AT SIAYA THIS 1ST DAY OF APRIL, 2025

D. KEMEI

JUDGE

