



**Githuka v Republic (Criminal Revision E035 of 2025)
[2025] KEHC 6703 (KLR) (19 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6703 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION E035 OF 2025**

DR KAVEDZA, J

MAY 19, 2025

BETWEEN

BEUTTAH FRANKIE GITHUKA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant, an accused person before the trial court in Criminal Case No. E2128 of 2021 – *Republic v Beuttah Frankie Githuka* where she faces a charge of obtaining money by false pretences. By a Notice of Motion dated 27th March 2025, he seeks revision of the trial court’s ruling delivered on 24th March 2025 and the consequential orders.
2. The application is supported by an affidavit sworn by the Applicant on the same date. He avers that although the matter commenced in 2021, the prosecution only closed its case on 5th December 2024, having called four witnesses.
3. The Applicant argues that despite glaring contradictions in the testimonies of PW1 and PW3, the trial court erroneously placed him on his defence. He further contends that the prosecution’s case is grounded on a contract that was illegal and contrary to public policy, involving an alleged bribe to influence a procurement report. In his view, the trial court’s decision seeks to enforce an illegality, contrary to the principle of *ex turpi causa*, which precludes judicial enforcement of unlawful transactions.
4. The Applicant also cites undue hardship resulting from the court’s conduct, particularly repeated demands for personal attendance during mentions, despite his advanced age and residence in Nyeri. He asserts that the court’s insistence on proceeding with a case of doubtful legal foundation amounts to unfair treatment and an abuse of the court process.



5. The application was canvassed by way of written submissions which have been duly considered and there is no need to rehash them. The High Court’s power of revision is set out in Article 165 (6) and (7) which provides: -
 - (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 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: -

The High Court may call 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. The revisionary jurisdiction of the High Court was discussed by Odunga J in a persuasive decision of *Joseph Nduvi Mbuvi v Republic* [2019] eKLR: -

“In my considered view, the object of the revisional jurisdiction of the High Court is to enable the high Court in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court’s revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well.”
8. The foregoing provisions vest this Court with revisionary jurisdiction over orders issued by subordinate courts. Consequently, this Court is duly seized of the requisite authority to entertain and determine the present application. In such applications, the onus lies on the applicant to demonstrate that the trial magistrate acted unlawfully, improperly, irregularly, or committed an error in the impugned decision or order.
9. In the present case, at the close of the prosecution’s case, the trial magistrate found that the applicant had a case to answer and accordingly placed him on his defence. This step afforded the applicant an opportunity to be heard, which is a critical component of the right to a fair trial as enshrined in Article 50 of the *Constitution*.
10. A criminal trial is a legal process that must be brought to its conclusion in accordance with the law. The applicant cannot lawfully withdraw from the process prematurely and is duty-bound to participate until its determination. The learned magistrate adhered to due process and accorded the applicant an opportunity to present his case, thereby upholding the principles of justice.
11. At the stage of ruling on whether there is a case to answer, the trial magistrate is not obliged to provide reasons, as doing so may pre-empt the defence’s case. The applicant has no legal entitlement



to demand such reasoning. His duty lies in preparing and presenting his defence to facilitate the just and expeditious conclusion of the trial.

12. In view of the foregoing, the applicant has failed to establish any illegality, impropriety, mistake, or irregularity warranting this Court's intervention under its supervisory jurisdiction. The application dated 27th March 2025 is devoid of merit and is accordingly dismissed.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 19TH DAY OF MAY OF 2025

D. KAVEDZA

JUDGE

