



REPUBLIC OF KENYA



KENYA LAW
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**Kashi & 3 others v ODPP & 6 others (Criminal Revision
E010 of 2025) [2025] KEHC 6350 (KLR) (16 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6350 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CRIMINAL REVISION E010 OF 2025**

CM KARIUKI, J

MAY 16, 2025

**IN THE MATTER OF APPLICATION FOR REVISION UNDER SECTION 348, 354,
357, 362 & 364(1)(B) OF THE CRIMINAL PROCEDURE CODE**

**IN THE MATTER OF ARTICLES 25(C), 48, 50(1) & 165(6) & 165(7) OF THE
CONSTITUTION OF KENYA**

**IN THE MATTER OF THE VIOLATION OF SECTION 4 & 9(2) AND (3) OF THE
VICTIM PROTECTION ACT, ACT NO. 17 OF 2014,**

**IN THE MATTER OF THE VIOLATION OF SECTION 4& 9(2) AND (3) OF THE
VICTIM PROTECTION ACT, ACT NO. 17 OF 2014,**

IN THE MATTER OF ARTICLES 157(11) OF THE CONSTITUTION OF KENYA

**IN THE MATTER OF AN APPLICATION FOR THE CALLING UP OF THE RECORD
& REVIEW OF THE ORDER DATED 18TH FEBRUARY 2025 BY HON. DANIEL
NGAYO, NAROK RESIDENT MAGISTRATE WITHDRAWING THE CRIMINAL
CASES AGAINST THE ACCUSED PERSONS UNDER SECTION 87(A) OF THE
CRIMINAL PROCEDURE CODE IN NAROK MCCR/ E1349/2024**

**(R VS NCHAKALAI SIOLOLO); NAROK MCCR/E1350/2024(R VS NTIMAMA
KERETO); NAROK MCCR/ 1351/2024(R VS OLOSHIRO NAMPASO, NCHAKLAI
SIOLOLO & JULIUS KISEMEI); NAROK MCCR/ E1352/2024(R VS OLORKUMUM
LEKAIYOK)**

**IN THE MATTER OF AN APPLICATION FOR CALLING UP OF THE RECORD &
REVIEW OF THE ORDER DATED 6TH FEBRUARY 2025 BY HON. H.M.
NYABERI(CM), NAROK CHIEF MAGISTRATE WITHDRAWING THE CRIMINAL
CASES AGAINST THE ACCUSED PERSONS UNDER SECTION 87(A) OF THE**



**CRIMINAL PROCEDURE CODE IN NAROK MCCR E1090/ 2024(R V S DOMINIC
NCHOE & JULIUS KISEMEI)
IN THE MATTER OF A CRIMINAL REVISION APPLICATION THEREON**

BETWEEN

GIDION KASHI 1ST APPLICANT
WILLIAM MIKWAYA 2ND APPLICANT
CHRISTOPHER MAITAI 3RD APPLICANT
JULIUS NAMPASO 4TH APPLICANT

AND

ODPP 1ST RESPONDENT
JULIUS KISEMEI 2ND RESPONDENT
NCHAKALAI SIOLOLO 3RD RESPONDENT
BNTIMAMA KERETO 4TH RESPONDENT
OLOSHIRO NAMPASO 5TH RESPONDENT
OLORKUMUM LEKAIYOK 6TH RESPONDENT
DOMINIC NCHOE 7TH RESPONDENT

RULING

1. The Applicants, vide an originating notice of motion dated 28/02/2025, sought orders;
 - i. Spent.
 - ii. That this honourable court, in exercise of its revisionary powers pursuant to sections 362 and 364 of the *Criminal Procedure Code*, be pleased to call up for review of the order of withdrawal of the criminal proceedings in: -
 1. Narok MCCR/ E1349/2024(*R v Nchakalai Siolo*)
 2. Narok MCCR/ E1350/2024(*R v Ntimama Kereto*)
 3. Narok MCCR/ E1351/2024(*R v Oloshiro Nampaso, Nchakalai Siololo & Julius Kisemei*)
 4. Narok MCCR/ E1352/2024(*R v Olorkumum Lekaiyok*) made on 18/02/2025 by the Hon. Daniel Ngayo, (Narok RM), with a view to satisfying itself as to the correctness, legality, and/ or propriety of the said order of withdrawal of the stated cases
 - iii. That this honourable court, in exercise of its revisionary powers pursuant to sections 362 and 364 of the *Criminal Procedure Code*, be pleased to call up for review, and revise the order of withdrawal of the criminal proceedings in Narok MCCR E1090/2024 (*R v Dominic Nchoe & Julius Kisemei*) made on 06/02/2025 by Hon. H.M. Nyaberi(CM), with a view to satisfying



itself as to the correctness, legality, and/or propriety of the said order of withdrawal of the stated cases.

iv. That upon the grant of prayer (ii) herein, this honourable court be pleased to review, vacate and set aside in toto the orders withdrawing the criminal charges against the accused persons issued on 18/02/2025 by Hon. Daniel Ngayo (RM) in

1. Narok MCCR/ E1349/2024(*R v Nchakalai Siolo*)
2. Narok MCCR/ E1350/2024(*R v Ntimama Kereto*)
3. Narok MCCR/ E1351/2024(*R v Oloshiro Nampaso, Nchaklai Siololo & Julius Kisemei*)
4. Narok MCCR/ E1352/2024(*R v Olorkumum Lekaiyok*)

And consequent thereupon to order that the trials in the said respective criminal proceedings proceed forthwith to their logical conclusion before any other court of competent jurisdiction in Narok chief magistrates court, with the exclusion of the respondent's prosecutor(s) connected with the impugned withdrawal of the stated criminal cases.

v. That upon the grant of prayer (iii) herein, this honourable court be pleased to review, vacate and set aside in toto the orders withdrawing the criminal charges against the accused persons issued on 06/02/2025 by Hon. H.M. Nyaberi(CM) in Narok MCCR E1090/2024 (*R v Dominic Nchoe & Julius Kisemei*) and consequent thereupon to order that the trials in the said respective criminal proceedings proceed forthwith to their logical conclusion before any other court of competent jurisdiction in Narok chief magistrates court, with the exclusion of the respondent's prosecutor(s) connected with the impugned withdrawal of the stated criminal cases.

vi. That owing to the unexecuted warrant of arrest at the time of the irregular withdrawal of the criminal proceedings subject of this criminal review application, this honourable court be pleased to issue warrants of arrest against Simon Sopia Siololo, Nchakalai Siololo, Ntimama Kereto, Oloshiro Nampaso Nchaklai Siololo, Dominic Nchoe, Julius Kisemei, and Olorkumum Lekaiyok, being the accused in

1. Narok MCCR/ E1349/2024(*R v Nchakalai Siolo*)
2. Narok MCCR/ E1350/2024(*R v Ntimama Kereto*)
3. Narok MCCR/ E1351/2024(*R v Oloshiro Nampaso, Nchaklai Siololo & Julius Kisemei*)
4. Narok MCCR/ E1352/2024(*R v Olorkumum Lekaiyok*)
5. Narok MCCR E1090/2024 (*R v Dominic Nchoe & Julius Kisemei*) for their taking the pleas in the respective criminal cases herein, under such terms as the subordinate court shall impose.

vii. That this honourable court be pleased to issue any such further order(s) as it may be expedient to meet the ends of justice, including but not limited to directing that the prosecution's case in the respective cited Narok chief magistrates criminal court proceedings subject of this review application be allowed to proceed to their logical conclusion.



- viii. That the costs of the application herein be borne by the respondent in any event, having been occasioned by the respondent's failure to act within the prescription of the law in the respective cases subject of this application to the detriment of the applicants.
2. The application is premised on sections 348, 354, 357, 362, 364(a)(b) and 367 of the Criminal Procedure Code, articles 25 (c), 48, 50(1), 157(8) and (11), 165(6) and (7) of the Constitution, section 9(2) and(3) of the Victim Protection Act, and inherent power of the court.
 3. The application is based on the grounds set out on the face of the application and the supporting affidavit sworn by the 1st applicant, Gidion Kashi, on 28/02/2025.
 4. The applicants also filed a supplementary affidavit sworn by the 1st applicant, Gidion Kashi, on 20/03/2025.

The Background

5. The applicants herein were complainants in the cited 5 criminal cases subject of the review application herein.
6. The accused persons never took pleas in the respective cases, as a consequence of which warrants of arrest were issued against the accused persons.
7. The complainants had recorded their respective complaints against the accused persons at the Mulot police station.
8. The complainants contest that they were not consulted before, during, and after the unilateral decision taken by the 1st respondent to withdraw the charges against the accused persons.

The response.

9. The 1st respondent opposed the application vide replying affidavit sworn on 18/03/2025 by Tabitha Mutangili, principal prosecutor.
10. The 1st respondent averred that the cited cases were registered between September and October 2024.
11. The 1st respondent averred that there is an ongoing commercial dispute between Losokwan Camp Limited and Maasai Mara landowners and related parties in ELC No. E013 of 2024. The parties to the dispute have resolved to use goons and other methods to settle their scores instead of awaiting the determination of their ELC case.
12. The 1st respondent averred that the dispute attracted the attention of the county leadership among other stakeholders, and efforts were made to resolve the dispute amicably, as the parties insisted on fighting it out in the courts and through the criminal justice system.
13. The 1st respondent averred that it received information from the police that in order to prevent further lawlessness, it was pertinent that parties be arrested and charged on the different accusations made and investigated.
14. The 1st respondent averred that after the decision to charge was made, other information was availed to the 1st respondent that there were other underlying issues involved, and the criminal justice system was being used to settle scores. For instance, in order to have someone arrested for assault, the name of a high-ranking official on the other side is mentioned as a suspect, even though there is proof they were not at the scene. The detailed complaint was forwarded to the 1st respondent's Narok office, having



been received from M/S E.O. Oyaró & Company advocates, which necessitated a review of the decision to charge.

15. The 1st respondent averred that a decision was made in the public interest to withdraw the charges and that the parties to pursue their dispute through the civil process.

Supplementary affidavit.

16. The applicants filed a supplementary affidavit sworn by Gidion Kashi on 20/03/2025.
17. The applicants averred that the 1st respondent has not disputed that they were never consulted in any manner by the 1st respondent nor allowed to address the court on the decisions impugned in the 5 criminal cases implicated.
18. The applicants contested that they were never served with the letter from E.O. Oyaró & Company advocates to elicit their comments on it, and further, the said letter did not seek withdrawal but the DPP to be merely guide the investigations.
19. The applicants averred that the specific material that allegedly informed the withdrawal of the charges was not tabled before the court, and the communication in that respect to the court via the prosecutor in each case.

Directions of the court.

20. The application was canvassed by way of written submissions.

The Applicants' submissions.

21. The applicants submitted that this court has jurisdiction to intervene in the review sought herein. The applicants relied on Article 50(1) of the *Constitution*, section 3 of the magistrate's court act, article 157(8), 165(6) and (7) of the *Constitution*, section 362, 364, 367 of the *Criminal Procedure Code*, *Republic v Leonard Date Sekento*[2019] eKLR, *Anne Wanja v Republic*[2022] eKLR, *Abdi v Republic*(Criminal Appeal E010 of 2023) [2024] KEHC 6570(KLR) (31 may 2024) (ruling), *George Taitumu v Chief Magistrate Court, Kibera & 2 Others* [2014] eKLR, *Newton Mwiti v Republic* [2021] eKLR, and *Republic v Sammy* (Criminal Case 36 of 2019)[2022] KEHC 195(KLR).
22. The applicants submitted that the decision to terminate the 5 cited criminal proceedings are irregular and illegal as no leave was sought by the DPP to withdraw and discontinue the said cases. The applicants relied on section 204 of the *Criminal Procedure Code*, *Republic v Sammy* (Criminal Case 36 Of 2019) [2022] KEHC 195 (KLR), article 25©, 50(1) of the *Constitution*, section 4(2)(b), 9(2) (b) of the *Witness Protection Act*, section 364 of the *Criminal Procedure Code*, and *Republic v Joshua Chacha Moronga* [2019] eKLR
23. The applicants submitted that the applicants held a legitimate expectation that their complaints, as recorded in the respective police occurrence book in respect of the criminal complaints against the respective accused persons, would be prosecuted to their logical conclusion. The applicants relied on article 159(2)(b), 157(11) of the *Constitution*,

The 1st respondent's submissions.

24. The 1st respondent submitted that the DPP, in exercise of the powers under Article 157 and section 5 of the *ODPP Act*, discontinued Narok MCCR/ E1349/2024, Narok MCCR/ E1350/2024, Narok MCCR/ E1351/2024, Narok MCCR/ E1352/2024, and Narok MCCR E1090/2024 in order to prevent the criminal justice system from being abused to achieve a collateral civil purpose, among other



improper uses of the criminal process. The 1st Respondent Relied on article 157(6)(7)(8) (10) (11) of the Constitution section 5(1)(b)(iii), (4)(e) of the ODPP Act, Republic v Leonard Date Sekento [2019] eKLR, Republic v Simon Okoth[2017] KEHC 3442(KLR), George Joshua Okungu & another u Chief Magistrate's Court Anti-Corruption Court At Nairobi & another [2014] KEHC 7181 (KLR), R v. Attorney General exp Kipngeno Arap Ngeny High Court Civil Application No. 406 of 2001

The 2nd -7th respondents

25. The 2nd -7th respondents submitted that this Honourable Court has the power and duty to protect its process from being used for improper purposes. The 2nd -7th respondents relied on Kuria & 3 Others v Attorney General [2002] 2 KLR 69, and Githunguri v Republic [1986] KLR 1.
26. The 2nd -7th respondents submitted that they defer submissions on the power of the 1st Respondent to in relation to withdrawal and/or discontinuation of cases.

Analysis and Determination.

27. This court has considered the application, the supporting affidavit, the replying affidavit, and supplementary affidavit, and the respective parties' submissions. The broad issue for determination is whether the application is merited.
28. 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 with 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.

29. 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.

30. Consequently, this court has jurisdiction to entertain the application before me. In the instant application, the applicant seeks to set aside the ruling by the subordinate court allowing the withdrawal of the charges against the 2nd to 7th respondents herein.

31. Article 157 (6) of the Constitution spells out the powers and responsibilities of the office of Director of Public Prosecutions. The same provides.

“The Director of Public Prosecutions shall exercise State powers of prosecution and may-

- a. Institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed.
- b. To take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority; and



subject to clauses (7) and (8), discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions under paragraph (b).

32. Article 157(8), on the other hand, provides that;

“The Director of Public Prosecutions may not discontinue a prosecution without the permission of the court.”

33. It is discernible from the foregoing that in seeking to discontinue a criminal case, the Director of Public Prosecutions must seek and obtain the permission of the court. The Director of Public Prosecution must show to court tangible reasons for the discontinuation that he seeks of the relevant case. The converse being that should the Director of Public Prosecutions fail to give such reasons as would justify the intended discontinuation, then the court retains the discretion to decline the application to discontinue the case or proceedings.

34. Article 157 (6), (7), (8), (10), and (11) of the *Constitution* vests the DPP with express powers to prosecute all criminal cases on behalf of the state. The Director of Public Prosecution can therefore initiate, continue, or choose to discontinue any criminal prosecution before a Court of law.

35. Section 87A of the *Criminal Procedure Code* provides:

“In a trial before a subordinate Court a public prosecutor may, with the consent of the Court or on the instructions of the Director of Public Prosecutions, at any time before judgment is pronounced, withdraw from the prosecution of any person, and upon withdrawal—(a) if it is made before the accused person is called upon to make his defence, he shall be discharged, but discharge of an accused person shall not operate as a bar to subsequent proceedings against him on account of the same facts.”

36. In this context, section 87(A) of the *Criminal Procedure Code*, which is relevant to this application it permits the prosecutor to apply before the Court seized of the case to withdraw the charge or charges facing an accused person at any time before final Judgement. This power is deemed to be exercised in the interest of the administration of justice and to avoid abuse of the process. It must be read alongside the provisions of Article 157 of the *Constitution*.

37. The Trial Court, therefore, has discretion to allow or disallow the application for withdrawal of a case depending on the prevailing circumstances. The Court only needed to establish whether the threshold had been met before deciding to discharge the accused as provided above.

38. The above was the holding in the case of *George Taitumu v Chief Magistrate Court, Kibera & 2 others* [2014]eKLR, the Court stated:

“Section 87(a) of the *Criminal Procedure Code* gives the learned magistrate broad discretion to accept or reject an application for withdrawal of charges presented by the prosecutor. In light of Article 157(11) of the *Constitution*, such discretion has to be exercised judiciously taking into account the facts of each case and in particular whether the application is brought in the public interest, the interest of administration of justice and the need to prevent and avoid an abuse of the legal process.”

39. Suffice it to note that the letter by M/s E.O. Oyaro & Company advocates was never availed before the trial court at the time the impugned ruling was made. However, on 12/09/2024, the DPP sought



to defer plea in MCCR NO. E1090 of 2024 to enable them to consider a letter that was written to their office. And on 14/01/2025, the prosecutor told the court that there is a letter that was written to his in-charge. On 18/02/2025, the prosecutor indicated to the court that he had been directed to withdraw the cases under section 87(a) of the CPC in Narok MCCR/ E1349/2024, Narok MCCR/ E1350/2024, Narok MCCR/ E1351/2024, Narok MCCR/ E1352/2024,

40. In the circumstances, I do not find any improper acts on the part of the Respondent, and withdrawing the matter was within its mandate. I deem the same was done in the interest of the administration of justice and to avoid abuse of the process. The Trial Court, in allowing the Respondent's application, correctly exercised its discretion. Such a discretion cannot be interpreted to be an illegality or impropriety on the part of the Court.
41. In conclusion, I do not find any illegality or other defects that would warrant revision under section 362 of the Criminal Procedure Code. Thus, the court makes the orders.
42. The application dated 28/02/2025 is dismissed.
43. It is so ordered.

DATED, SIGNED, AND DELIVERED AT Narok THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 16TH DAY OF MAY, 2025.

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CHARLES KARIUKI
JUDGE

