



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Mwendia (Criminal Revision 180 of 2023)  
[2025] KEHC 5725 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5725 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL REVISION 180 OF 2023**

**EM MURIITHI, J**

**MAY 8, 2025**

**BETWEEN**

**REPUBLIC ..... APPELLANT**

**AND**

**BERNARD GIOCHI MWENDIA ..... RESPONDENT**

**RULING**

1. The DPP/Prosecutor applicant filed an application for revision by letter dated 19th September 2023 seeking revision of the trial court ruling of 15/9/2023 in which the learned magistrate declined to terminate the criminal trial on request of the DPP on the ground that the complainant and the accused had reconciled and the former had indicated that he did not wish to pursue the criminal case.
2. In declining the request to terminate the case, the magistrate had considered the issue in a full ruling concluded as follows:

“Conclusion

Having considered the circumstances of this case, the court does not approve of the proposed withdrawal of the charges for the following reasons:

1. Alternative Dispute Resolution mechanisms under Article 159 (2) (c) must be supportive and not destructive of the ability of the DPP to conduct his primary role as the executor of the State's powers of prosecution.
2. The obligation of the DPP who has constitutional mandate and duty to consider under Article 157 (11) "the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process" has not been satisfactorily met.



3. The complainant grounds for seeking withdrawal have not been stated to court for consideration.

The criminal charges herein should, therefore, proceed to full trial.”

3. The DPP’s letter of 19th September 2023 seeking revision was as follows:

“Re: Gichugu Principal Magistrate’s Court Criminal Case No E 434 of  
2023 Republic Vs Benard Giochi Mwendia

May it please Your Lordship.

We pray that this matter be placed before your Lordship pursuant to the following provisions of the law.

Articles 165 [3], [6] and [7], Article 159 [1] and [2], Article 157, Article 50 [1] and [9] of the Constitution of Kenya 2010 as read with Section 362 and 364 of the Criminal Procedure Code.

The Applicant herein prays that this Honourable Court be pleased to invoke its supervisory Jurisdiction over the subordinate Courts and call for the record of the Gichugu Principal Magistrate’s Court Criminal Case no E434 of 2023 in order to satisfy itself on the propriety, regularity or legality of the Ruling made on 15th September 2023.

A. Reliefsought:

We pray that this Honourable Court be pleased to invoke its Supervisory Jurisdiction over the Subordinate Court in Gichugu

Criminal Case No E434 of 2023 for the following Orders:

- (i) That this Honourable Court be pleased to call for the proceedings and the Ruling in Gichugu Criminal Case No 434 of 2023.
- (ii) That the director of Public Prosecution made an application to have the same withdrawn vide a letter dated 5th September 2023 but the trial magistrate declined vide a Ruling dated 15th September 2023.
- (iii) That the parties in Criminal Case Number E434 of 2023 are friends who disagreed culminating to the filing of matter before Court.
- (iv) That the Complainant herein vide a letter dated 20th June 2023 addressed to the Applicant stated that he was not interested in pursuing the case and wished to voluntarily have it withdrawn.
- (v) That there was therefore an error in making the decision to Charge given the fact that the applicant had no information on the background of the case.
- (vi) That parties have since agreed and are willing to reconcile their differences without going through the Court process.
- (vii) That indeed a Criminal Case may be terminated if parties are willing and ready to reconcile as envisaged under Section 176 of the CPC.
- (viii) That the applicant is empowered under Article 157 [6] [c) to have a matter terminated.



Reasons wherefore the applicant prays for: -

This Honourable court be pleased to review and order Criminal Case No E434 of 2023 as withdrawn.

Any other order in favour of the applicant.”

4. Before the learned magistrate, the County DPP representative’s letter to the Prosecution Counsel Gichugu dated 4th September 2023 attached the Complainant plea in terms that –

“The prosecution counsel

Court 2

Gichugu Law Courts

Re: Gichugu MCCR/E434/2023

Republic Versus Benard Mwendia Giochi

The above matter refers.

The complainant (David Maina Kathae) has severally been to our office requesting for withdrawal of charges against the accused person one Benard Mwendia Giochi.

We have been reluctant to withdraw the said charges against the accused person for reasons that the matter involved is serious in nature but the complainant has insisted on withdrawal of the same indicating that they have since reconciled and he wishes to discontinue the case (Copy of a withdrawal letter attached).

We therefore direct that the matter be withdrawn for we foresee frustration in Court as we by to maintain and continue the prosecution of the case because the complainant shows no interest in pursuing the same.

Jane Maari

Assistant Director of Public Prosecutions”

5. The Complainant’s handwritten letter dated 20th June 2023 addressed to the Office of the Director of Public Prosecution was in terms as follows:

“Ref: R v. Bernard Giochi Mwendia

I am David Maina Kathae of ID No. 22720349 and phone number 0715950782, a business man residing within Kiamutugu. I understand the type of the case and wish to withdraw the pending case before Court and this is my wish and nobody has forced me to withdraw.

Signed.”

6. This Court has considered the submissions filed by the DPP applicant and the supporting submissions of the Accused.
7. The trial Court cannot be faulted for feeling that from the materials presented before her the prosecution had not demonstrated compliance with the principles of Article 157 (11) of the Constitution.



8. It is also noted that the expanded reasons for seeking to discontinue the trial including an offer for reconciliation was not presented before the trial court and it cannot be faulted for failure to consider what was not before it.
9. There is no doubt that the DPP has under Article 157 (6) (c) the right to terminate proceedings, as follows:
  - “(c) subject to clause (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).”
10. However, that right to discontinue criminal proceedings is subject to the permission of the Court in terms of Article 157 (8) of the *Constitution* which provides as follows:
  - “(8) The Director of Public Prosecutions may not discontinue a prosecution without the permission of the court.”
11. It must be accepted that in accordance with the principles of interpretation under Article 259 (11) of the *Constitution* that -
  - “(11) If a function or power conferred on a person under this Constitution is exercisable by the person only on the advice or recommendation, with the approval or consent of, or on consultation with, another person, the function may be performed or the power exercised only on that advice, recommendation, with that approval or consent, or after that consultation, except to the extent that this Constitution provides otherwise.”
12. I would also consider that where such approval or permission is required, the same in the usual language of law should not be unreasonably withheld.
13. However, in this case the learned trial magistrate gave most elaborate consideration of the matter and finding no justification for the request to ruminant declined the application by the prosecution in a reasoned ruling, he subject of the revision application herein.
14. In the circumstances, the appropriate remedy is not one for revision on question of legality of the proceedings of the trial court but really one for review to present any material that the prosecution could not have availed with due diligence at the time of the application to terminate the trial, if that be the case, or to give other sufficient reasons for review of the trial court’s decision.
15. The Court has under section 364 of the *Criminal Procedure Code* the full powers of the Court as follows:
  - “364. Powers of High Court on revision
    - (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may— (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence; (b) in the case of any other order other than an order of acquittal, alter or reverse the order.”



16. The Court declines the application for revision. So as not to prejudice the consideration of the matter by the trial court, this Court does not make any observations on the merits.

**Orders**

17. Accordingly, for the reasons set out above, the Court rejects the application for revision and remands this matter to the trial court for the hearing of any review application as the DPP may be minded to make or for further proceedings in the trial as the case may be.

Orders accordingly.

**DATED AND DELIVERED THIS 8<sup>TH</sup> DAY OF MAY 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Mamba for DPP.

Accused in Person.

