



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Bolkitany v Republic (Criminal Revision E073 of 2025)  
[2025] KEHC 7816 (KLR) (4 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 7816 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E073 OF 2025  
RN NYAKUNDI, J  
JUNE 4, 2025**

**BETWEEN**

**JULIUS KIPTANUI BOLKITANY ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before this court is an application dated 7<sup>th</sup> day of April 2025 seeking the following orders:
  - i. That, this application be certified urgent and the same be heard on priority.
  - ii. That the trial of the case be re-opened and PW1 and PW2 be recalled to testify afresh on new recanting evidence brought about after conclusion of the trial but before delivering of judgementWhich Application is predicated on the grounds:
  - i. New recanting evidence has been disclosed by PW1 and PW2 and needs to be brought to the attention of the court
  - ii. The evidence is transmitted by way of short message service (sms) to the accused
  - iii. The additional evidence is very critical and bound to change entire position of the case
  - iv. The court has power to accept or reject the evidence under the law
  - v. The accused has the right to have this evidence brought to record and knowledge of the court
  - vi. Recanting evidence/ testimony is critical especially in a case such as this one-incest
  - vii. The prosecution has nothing to lose but everything to gain legally since it is the prosecution witness bringing the new evidence



It is further annexed by an Affidavit sworn by the said Julius Kiptanui Bolkitany which states as follows:

- i. That I male adult sound of mind and competent to swear this affidavit
  - ii. That I am currently remanded at Eldoret G.K prison following an alleged charge of incest
  - iii. That this case is due to be concluded probably after filing of written submissions after both sides have given their evidence
  - iv. That recently, while here in remand, I received a message or sms text from my two (2) daughters sent vide phone no. 0756XXXX and 0745XXXX apparently belonging to one Sarah Jerubet Chumba who happens to have testified as pw5
  - v. That the evidence contained in the message sent by my daughter is to the effect that the two of them were 'pushed by pw5 to frame me after pw2 discovered she was pregnant'
  - vi. That I now advised by my advocate that it is necessary to bring this evidence on record for the court to consider it before delivering judgement
  - vii. That I further advised that it is necessary to recall pw1 and pw2 so that they can tell the court 'viva voce' of this new evidence
  - viii. That meanwhile, I attach a 'screenshot' of the sms sent to me (see copy marked 'A')
  - ix. That no prejudice will be occasioned to the state and pw5 if this new disclosure is made public
  - x. That this application is made in good faith for the ends of justice to be seen to met
  - xi. That I swear this affidavit in support of this application
  - xii. That I have stated herein above is true to the best of my knowledge and belief
2. This application is premised under section 362, 364, 365, 366, and 367, [criminal procedure code](#), chapter 75, laws of Kenya. This court is also empowered under article 165 (6)(7) which provides as follows:
- a. 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
  - b. 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
3. For this court to review the decision of the trial court the applicant must bring himself within the principles enshrined in the following case law: "This application is brought under section 362 as read with 364 of the [CPC](#). The object of revisional jurisdiction within the scope of these provisions is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders which upon the face of them bear a token of careful consideration and appear to be in accordance with law. Revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes but merely indicative. Each case



would have to be determined on its own merits. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner.”

There has to be well-founded error and it may not be appropriate for the court to scrutinize the orders which upon the face of them bear a token of careful consideration and appear to be in accordance with law. Revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. See: *Amit Kapoor vs Ramesh Chander*, (2012) 9 SCC 460

4. It is therefore trite that for this court to review the sentence imposed by the trial court, the applicant must satisfy besides the above guidelines the following key principles:
  - a. that the decision was in any way unauthorised or contrary to law;
  - b. excess of jurisdiction;
  - c. failure to satisfy or observe conditions or procedures required by law;
  - d. breach of the principles of natural justice;
  - e. unreasonable, irregular or improper exercise of discretion;
  - f. abuse of power
  - g. fraud, bad faith, improper purpose or irrelevant consideration;
  - h. acting on instructions from an unauthorised person;
  - i. conflict with the policy of an Act;
  - j. error of law, whether or not apparent on the face of the record;
  - k. absence of evidence on which a finding or assumption of fact could reasonably be based;
  - l. breach of or omission to perform a duty
  - m. deprivation of a legitimate expectation;
  - n. a defect in form or a technical irregularity resulting in a substantial wrong or miscarriage of justice; or
  - o. an exercise of a power in a manner that is so unreasonable that no reasonable person could have so exercised the power
5. what the applicant is seeking from this court is to issue a writ of certiorari which is granted primarily by a superior court against the decision of an inferior court which is usually determined from the face of the record without going into the merits of the decision. In essence it is to establish whether inferior court has acted without or in excess of jurisdiction or has not proceeded according to the essential requirements of the law. It is settled law a writ of certiorari cannot be issued for the purpose of correcting mere errors and irregularities, or of reviewing orders passed in exercise of discretionary power or authority, or of revising the decision on a question of fact respecting which the evidence was conflicting, or of examining the sufficiency of the evidence to support the finding.
6. The applicant in this case who was aggrieved by the order of the learned trial magistrate endeavored to seek redress at the hands of the same court but was denied a chance to have the key witness recalled for further cross examination to test the veracity of the screenshot electronic evidence. Incidentally



section 150 of the *criminal procedure code* and section 146 (4) of the *evidence Act* empowers the court to issue writs of recalling witnesses who have already testified in the pending trial before final judgment. A peruse of the record makes it quite clear but the said learned magistrate had jurisdiction to deal with the matters in controversy between the parties but refused to exercise discretion under the above provisions. It matters not how lengthy the proceedings had been argued so long as the learned trial magistrate was yet to deliver the final decision. In my consider view though the applicant has a right of appeal when the entire judgement can be assessed within the parameters of the appeal process. The event the court erred in law and facts some of the grievances can be addressed at that level. For those reasons I decline to grant the writ of certiorari or invoke section 362 of the *criminal procedure code*. That's all I want to say as of now on this application

7. It is ordered.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 4<sup>TH</sup> DAY OF JUNE 2025**

.....

**R. NYAKUNDI**

**JUDGE**

