



**Republic v Agandi (Miscellaneous Application E077 of 2025)
[2025] KEHC 8833 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8833 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS APPLICATION E077 OF 2025**

A MABEYA, J

JUNE 20, 2025

BETWEEN

REPUBLIC APPLICANT

AND

PHILIP PAMBO AGANDI RESPONDENT

RULING

1. This ruling determines the application dated 16/5/2025 in which the applicant seeks to invoke this court's supervisory and re-visionary jurisdiction and proceed to set aside or revise the orders of the trial court in Kisumu Criminal Case E183 of 2024 delivered on 30/5/2025.
2. The application is brought under Article 165 (6) & (7) of *the Constitution* and Section 362 of the *Criminal Procedure Code*.
3. The application was based on the grounds set out on the face thereof as well as the Supporting Affidavit of Prosecution Counsel Catherine Onyango sworn on 16/5/2025.
4. The respondent was charged with the offence of stealing by servant contrary to section 281 of the *Penal Code*. It was contended that on the 2/4/2025, the prosecution counsel in conduct of the matter made an application to supply the defence with additional documents after which the court directed that the same be done within 14 days with a hearing date being set for the 30/4/2025.
5. Mrs. Onyango, Prosecution Counsel deposed that, she reported on duty at Kisumu Station on 28/5/2025 (sic) (28/4/2025) and was assigned the trial court. On the following day, she served the documents on the defence Counsel in compliance with the court directions.
6. That on 30/4/2025 when the matter came up for hearing, the trial proceeded to expunge all the documents that were served after the 2/4/2025 all which of had not been produced. That the delay



- in serving the documents was occasioned by the fact that the Counsel in conduct of the matter was unwell.
7. I have considered the Motion and the issue for determination is whether the applicant has made out a case for the revision of the order made on 30/4/2025.
 8. This Court's supervisory powers is set out in Article 165 of *the Constitution* 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”.
 9. The *Criminal Procedure Code* provides the procedural law on revision. Section 362 thereof provides that: -
 - “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”.
 10. In *Joseph Nduvi Mbuvi v Republic* [2019] eKLR, the court opined that: -
 - “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.”
 11. From the record, at the time the matter came up for hearing, though acknowledging that the documents had been served late, the defence Counsel did not oppose their production. The defence Counsel indicated that he would have opposed their production but would seek for more time to consider them before proceeding with the trial. The prosecution Counsel indicated that she was only new in the matter.
 12. The Court observed that the prosecution had been given six (6) weeks to supply the documents that it intended to use at the trial. That the first order had been made on 14/2/2025. That the action complained of occurred 4 months before the accused was charged. That the delay had not been explained and would amount to an infringement of Article 50(2) of *the Constitution* as to fair trial.
 13. I have considered the record of the trial court and the proceedings of 30/4/2025. It is not in dispute that the orders complained of were made in the discretion of the trial court. This was not the first time



the issue of supplying the documents was being raised. It had been raised and an order made in respect thereof during and the time of pre-trial.

14. It was again raised on 2/4/2025 when the trial court gave the prosecution 14 days to comply with the simple obligation of supplying the subject documents. The obligation of supplying evidence to the defence is not one which requires a court order, it is a matter of course for the prosecution under Article 50(2)(j) of *the Constitution*.
15. Once the Director of Public Prosecution decides to charge a suspect, it behoves him and his office to comply with the strict command of *the Constitution* as to fair trial. He must not wait for a court order to comply with what he is required to do as matter of course.
16. In the present case, the trial court considered that the prosecution had had more than 2 months to comply but it had failed. The fact that the ODPP decided to change the prosecution Counsel mid-stream is no good reason for failure to comply with the order of the court of 2/4/2025. Trials are supposed to be concluded at the earliest. Courts have no luxury of time to drag trials. This is a constitutional imperative. Article 159 of *the Constitution* is apt about that fact. The trial court was alive to that fact.
17. Accordingly, I find no irregularity nor any illegality in the proceedings and orders of 30/4/2025. In the premises, I decline to grant the orders sought in the Motion dated 16/5/2025 and hereby dismiss the same.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 20TH DAY OF JUNE, 2025.

A. MABEYA, FCI Arb

JUDGE

