



**Abdi v Republic (Criminal Revision E134 of 2024)
[2025] KEHC 10597 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10597 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL REVISION E134 OF 2024**

**RC RUTTO, J
JULY 17, 2025**

BETWEEN

DAARA ABDI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By way of a Notice of Motion application dated 20th October 2024, the applicant sought the following prayers:
 - a. ...Spent
 - b. ...Spent
 - c. That the honourable Court in exercising its revisionary powers under section 362 and 364 of the *Criminal Procedure Code* do call for and examine the record in Chief Magistrate Court at Mavoko in Criminal Case No E1197 of 2022; *Republic v Abdirahaman Maalim Mubumed aka Fara and Mohamed Ahmed Abdulahi aka Zakaria* for purposes of satisfying and pronouncing itself as to the correctness, legality and propriety of the proceedings and the orders/ruling issued on 8th October 2024.
 - d. That the Court be pleased to revise, vary and/or set aside the ruling/orders issued on 8th October 2024 by Hon Derrick Kuto SPM in Mavoko in Criminal Case No E1197 of 2022; *Republic v Abdirahaman Maalim Mubumed aka Fara and Mohamed Ahmed Abdulahi aka Zakaria* and order that the trial proceed to its logical conclusion before any other court of competent jurisdiction save for the prosecutors involved in the said withdrawal and/or chief magistrates court at Mavoko Law Courts.



2. The application was supported by the grounds listed therein and an affidavit sworn by Daara Abdi on 28th October 2024.
3. On 13th December 2022, the accused persons in Criminal Case No E1197 of 2022 were jointly charged with the following four counts: Robbery with violence contrary to Section 296(2) of the [Penal Code](#); Malicious damage to property contrary to Section 339(1) of the [Penal Code](#); Stealing contrary to Section 268(1) as read with Section 275 of the [Penal Code](#); and Assault causing actual bodily harm contrary to Sections 250 and 251 of the [Penal Code](#). They took pleas on the charges in three counts, save for the offence of Robbery with violence in count 1.
4. A preliminary objection was raised, asserting that the offence of robbery with violence did not disclose an offence recognized under the law. The objection was dismissed by a ruling delivered on 3rd May 2023. Following this, the prosecution informed the trial court that the accused persons had requested a review of the charges and they were not ready to take plea for the offence of robbery with violence. However, counsel holding and watching brief for the complainants/victims objected to this request. The court agreed with the objection, and the accused persons proceeded to take plea and were admitted to the existing bond terms.
5. On 6th July 2023, the prosecutor, invoking Section 87(a) of the [Criminal Procedure Code](#), sought to withdraw Counts 1, 2, and 4 against the 1st accused person; and all Counts against the 2nd accused. The trial court agreed to grant the withdrawal and the charges were withdrawn.
6. Dissatisfied with the withdrawal, the complainants filed High Court Criminal Revision No. 10 of 2023. The matter was heard and determined via a ruling delivered on 31st May 2024, which culminated in the matter being referred back to the trial court.
7. Back to the trial Court, on 10th September, 2024, the prosecution made afresh application for withdrawal under section 87(a) of the [CPC](#). From the record, all parties were present and were heard on this subsequent withdrawal application.
8. In a Ruling delivered on 8th October, 2024, the prosecution's plea for withdrawal was allowed and the matters were withdrawn, save for count 3 against the 1st accused. It is this subsequent withdrawal that is the basis of the current application before me.
9. According to the applicant before this Court, the Ruling of 31st May, 2024 set aside both the ODPP's Report dated 29th May 2023 and the subsequent withdrawal of charges effected on 6th July 2023. That the High Court found that the withdrawal had contravened Article 157(11) of the [Constitution](#).
10. The applicant stated that on 10th September 2024, the prosecution once again sought to withdraw Counts 1, 3, and 4 against both accused persons and Count 2 against the second accused. That the complainants/victims opposed the application, asserting that they were ambushed by the fresh request for withdrawal, which request relied on the same report dated 29th May 2024, despite this report (in their opinion) having been previously set aside by the High Court. They argued that the trial court failed to consider this critical issue and arbitrarily allowed the withdrawal through its ruling delivered on 8th October 2024.
11. The complainants further contended that the Office of the Director of Public Prosecutions (ODPP) had been compromised. They alleged that the prosecution had misled the court into believing that the accused persons had formally sought a review of the charges, whereas no such formal request had been made. They submitted that the accused had written a letter dated 8th May 2023, four days after the prosecution had misled the court, and that they did not provide any clear timelines within which the resultant report would be filed in court.



12. The complainants maintained that it was a travesty of justice for the ODPP to disregard the clear and unequivocal ruling of the High Court, and to once again attempt to withdraw the charges based on the same report that had already been set aside. They argued that this action was taken in bad faith and contrary to the public interest as outlined in Article 157(11) of the *Constitution*. Moreover, they emphasized that no alternative grounds had been provided by the prosecution to justify the second withdrawal.
13. The applicant also deponed that the charges were withdrawn irregularly and illegally, resulting in injustice to the complainants. They urged the Court to find that the ODPP had exhibited bias in favor of the accused persons, a conduct which they argued falls outside the powers and mandate of the ODPP. Consequently, they prayed that the matter be transferred to be heard by a court outside Machakos County.
14. The application was opposed by the respondent through an affidavit sworn by prosecution counsel, M/s Eunice Musango. She deponed that the subject matter was placed before the trial court in accordance with directions issued by the High Court, and that the withdrawal proceedings were conducted in line with Article 50 of the *Constitution* by ensuring a fair hearing and meaningful participation of the victims and their legal representatives.
15. She refuted the claim that the High Court had set aside the report dated 29th May 2023 or ordered reinstatement of the charges. According to her, the High Court's ruling only faulted the withdrawal process to the extent that it had been conducted without informing the victims or their lawyers.
16. Counsel emphasized that on 10th September 2024, the prosecution presented the withdrawal application in the presence of all parties, in full compliance with the High Court's directive. She maintained that the applicants were aware of the court's directions and had the opportunity to respond. Further that the court, after hearing all parties, delivered a well-reasoned and sound ruling on 8th October 2024. It was therefore incorrect, in her view, to claim that the court acted improperly.
17. The respondent further submitted that, upon reviewing the matter, it was concluded that there was insufficient evidence to sustain the charges, hence the recommendation to withdraw them. Counsel asserted that it is incumbent upon the prosecution to only pursue charges where there is compelling and credible evidence. The applicant's assertions, in her view, amounted to baseless and unwarranted attacks against judicial officers and other court officials, and appeared to be an attempt at forum shopping. She reiterated that the ODPP acted in good faith, within the confines of the law, and in the public interest.
18. The respondent urged the Court to find that the trial court had properly and judiciously exercised its discretion in allowing the ODPP's application for withdrawal of the charges.
19. It was also stated that the orders from the High Court were explicit, and that the matter was brought before the trial court for withdrawal, whereupon there was representation of all parties involved—including the applicant's advocate. Further, it was argued that the trial court considered the withdrawal application and all submissions made before it, and arrived at a reasoned decision. The respondent emphasized that it is not unusual for the ODPP to seek withdrawal of charges when such a move aligns with public interest, the proper administration of justice, and the need to prevent the abuse of legal processes.
20. The respondent also averred that the accused persons had formally requested a review of the charges in light of their version of the events, as well as evidentiary gaps that had not been addressed when the charges were initially preferred.



21. In conclusion, the respondent fully supported the ruling delivered by the trial court.

Issues for Determination

22. Based on the foregoing, the central issue arising for determination is whether the trial court erred in allowing the respondent's application to withdraw the charges under Section 87(a) of the Criminal Procedure Code.
23. To determine this, it is important to clarify the chronology of events. It is undisputed that both accused persons had been charged with four counts, as set out earlier in this ruling. The accused persons duly took plea on the charges. Subsequently, on 6th July 2023, the prosecution, in exercise of its powers under Section 87(a) of the Criminal Procedure Code, sought to withdraw Counts 1, 3, and 4 against the 1st accused; and Counts 1, 2, 3, and 4 against the 2nd accused.
24. The trial court proceeded to allow the application and issued the following order:
- “All charges against the 2nd accused are hereby withdrawn under Section 87(1) of the Criminal Procedure Code. Cash bail deposited for the 2nd accused shall be refunded to the depositor. Counts 1, 3, and 4 against the 1st accused person are also withdrawn under Section 87(a) of the CPC. Mention scheduled for 26th July 2023.”
25. Aggrieved by that decision of the trial court issued on 6th July 2023, the complainants/victims moved to the High Court by way of Criminal Revision No. 10 of 2023. They sought an order under Sections 362 and 364 of the Criminal Procedure Code for the Court to call for and examine the record in Criminal Case No. E1197 of 2022 at the Chief Magistrate's Court in Mavoko *Republic v. Abdirahaman Maalim Mubumed alias Fara and Mohamed Ahmed Abdulabi alias Zakaria*, with the aim of assessing the correctness, legality, and propriety of the proceedings and orders issued on 6th July 2023.
26. Specifically, they requested the High Court to revise, vary, and/or set aside the said orders and direct that the trial proceed to its logical conclusion before a court of competent jurisdiction and excluding the prosecutors who had previously sought the withdrawal of charges.
27. Upon hearing the parties the High Court framed the key issue for determination as follows: whether the orders issued on 6th July 2023 should be revised, varied, or set aside. The Court made the following observations:

“42. . Having considered the whole trial court record, I note that the victim or complainant was not involved in the process of withdrawal of the charges, they allege they were not consulted and this has not been denied by the respondent. Criminal litigation is a tripartite relationship in this day and age with the enactment of the Victim Protection Act, the victim plays a vital role in these proceedings. The victim was not copied in the letters. The issue of locus standi cannot arise because she is a witness from a cursory perusal of the charge sheet.

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44. From the Trial Court record, the trial court was presented with a letter presumably the detailed evaluation of evidence from the ODPP Machakos to OC DCI Mlolongo dated 23rd May 2023 where a number of anomalies were noted and recommendations to aid further investigations and where evidence was not available proposal to withdraw charges was preferred.



45. Unfortunately, it is not clear from the record that the complainant/victim watching brief counsel/ was contacted, served with the said report and/or present during the proceedings to address the court on any concerns before the Trial Court made its decision/order.
46. This was contrary to the laid down position in Waswa case supra, a victim/complainant is part of the proceedings and views and/or concerns may be raised by counsel.
47. Secondly, the reasons for withdrawal ought to have been ventilated either by the ODPP/Prosecution at least even in summary of the detailed report and response from defense counsel and watch brief/victim counsel and then the court to grant/deny orders and confirm reasons for the orders.”
28. The High Court then concluded at paragraph 50 of the Ruling by stating that:
- “ 50. In conclusion I find that the order of withdrawal in *Mavoko Republic v. Abdirahaman Maalim Muhumed alias Fara and Mohamed Ahmed Abdulabi alias Zakaria* on 6th July 2023 was not within the provisions of Article 157(11) of the *Constitution* and within the other broader principles and values in the administration of justice where justice is open, transparent responsive and accountable under Article 159 of the *Constitution*. Hence in exercise of powers donated to this Court under section 362 of the *Criminal Procedure Code*, I find the order to withdraw charges without victim complainant knowledge or victims lawyer present informed or served with the ODPP report irregular and lacking in propriety and set the same aside. Accordingly, I direct the matter to be mentioned before the Chief Magistrate Mavoko for directions to conduct withdrawal proceedings in line with Article 50 of the *Constitution* ensuring a fair hearing with input of victim/complainant and/or lawyer’s input.”
29. Following the delivery of the High Court ruling in HCCR Revision No. 10 of 2023, the matter of *Republic v. Abdirahaman Maalim Muhumed alias Fara and Mohamed Ahmed Abdulabi alias Zakaria* was mentioned before the trial court on 10th September 2024 for directions. On that day, the prosecution made an application under Section 87(a) of the *Criminal Procedure Code* seeking to withdraw, counts 1, 3, and 4 against both accused persons, and Count 2 against the second accused.
30. The applicants argued that this application amounted to an ambush, alleging that the prosecution had acted contrary to the High Court’s directions and relied on the report dated 29th May 2024, which they believed had been set aside. They maintained that the trial court ignored this significant objection and arbitrarily allowed the withdrawal through its ruling delivered on 8th October 2024.
31. However, a perusal of the High Court’s decision referenced by the applicants and partly quoted in this ruling reveals that the High Court did not set aside the report dated 29th May 2024. Rather, the High Court held that the withdrawal process conducted on 6th July 2023 had failed to comply with procedural safeguards, specifically the requirement to involve the complainant/victim in accordance with the ODPP guidelines, the *Victim Protection Act*, and Article 157(11) and Article 50 of the *Constitution*.
32. The High Court explicitly directed that withdrawal proceedings be re-commenced afresh, ensuring a fair hearing with the full participation of the victim/complainant and/or their legal representatives.



- 33. Upon review of the trial court’s ruling delivered on 8th October 2024, the record confirms that the trial court noted the objection raised by the victim to the prosecution’s application for withdrawal. The court proceeded to consider submissions from all parties—including the prosecution, defense, and victim’s counsel as well as applicable legal provisions and case law. It then exercised its discretion and allowed the withdrawal under Section 87(a) of the *Criminal Procedure Code*.
- 34. From this analysis, it is evident that the trial court complied with the High Court’s directions. Unlike the prior proceedings faulted by the High Court, the 8th October 2024 ruling was preceded by a hearing in which the complainant was present and represented, and their concerns were duly recorded and considered.
- 35. Accordingly, the assertion that the trial court acted contrary to the High Court’s ruling is not supported by the record. The applicants have not demonstrated any procedural defect or irregularity in the conduct of the trial court post-revision. On the contrary, the withdrawal application was presented transparently, and the trial court delivered a reasoned decision in alignment with constitutional and statutory requirements.
- 36. The upshot is that the applicant has failed to demonstrate that the trial court, in exercising its discretion and allowing the withdrawal application by the prosecution, acted whimsically and extra-constitutional. The application lacks merit and the same is dismissed. File closed.
- 37. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 17TH DAY OF JULY, 2025

RHODA RUTTO

JUDGE

In the presence of;

.....Applicant

.....Respondent

Selina Court Assistant

