



**Dado v Republic & 7 others (Criminal Revision E027 of 2024)
[2025] KEHC 10627 (KLR) (Crim) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10627 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
CRIMINAL
CRIMINAL REVISION E027 OF 2024
SC CHIRCHIR, J
JULY 17, 2025**

BETWEEN

DIBA HUSSEIN DADO APPLICANT

AND

REPUBLIC 1ST RESPONDENT

MOHAMED NOOR DIDA 2ND RESPONDENT

DIDA ABKUL 3RD RESPONDENT

HASSAN ABDI NOOR 4TH RESPONDENT

HALAKE GALGALO 5TH RESPONDENT

ABDI KALIQ HASSAN 6TH RESPONDENT

MOHAMED ABDI KADIR 7TH RESPONDENT

ABDI HASSAN 8TH RESPONDENT

RULING

1. This Revision application has been brought by the complainant in Isiolo Chief Magistrate Court's Criminal case number 641 of 2023 (Republic v Mohammed Noor Omar and 6 others).
2. Through a letter written by his advocate dated 26/08/2024, the applicant has urged the court to exercise its jurisdiction under Article 165(6) and (7) of the *Constitution* and Sections 364 and 362 of the *Criminal Procedure Code* and revise the orders of 16.8.24 by the trial court in which the said court acquitted the Respondents, the then accused persons in the aforesaid criminal case.



3. It is stated that the acquittal of the Respondents under Section 210 of the [criminal procedure code](#) on the basis of the the principle of double jeopardy was erroneous as the earlier charges were withdrawn under Section 87(a) of the [Criminal Procedure Code](#).
4. The Respondents did not file any objection to the Application.

Determination

5. On 23.4.2019, the Respondents were charged with 2 counts of Forcible Entry Contrary to Section 90 of the [Penal Code](#) and another two for Forcible Detainer. The land parcels , the subject of Forcible entry and detainer were Isiolo Township block 1/159 and Isiolo Township block 1/160 belonging to one Diba Hussein and Amina Hassan Hussein respectively.
6. The case remained unprosecuted for about three years without complainant appearing in court to testify. The trial court acquitted Respondents were acquitted under Section 206 of the [Criminal Procedure Code](#).
7. However, on 30.03.2023 the Respondent, were again charged under criminal case Isiolo Chief Magistrate’s Court criminal case number E641/23 . In the cause of the proceedings the Respondents alerted the court the fact that they had been previously charged with the same offences and acquitted under section 206. The alert was prompted by the prosecution’s attempt to withdraw the case under Section 87 (A) of the [criminal procedure code](#), an Application which the respondents resisted.
8. In a ruling delivered on 16.8.24 the trial court found that the respondent had indeed been charged for the same offence and acquitted them while holding that present charge under criminal case number E641/2023 contravened Article 50(2) of the [Constitution](#).
9. It is this ruling that the applicant has asked the court to reverse. The applicant’s argument is that under criminal case number 389/2019 the respondents had been acquitted under section 87(a) of the criminal code, under which the respondents could still be re- arrested and prosecution on the same charge.
10. I have perused the proceedings in criminal case number 385 of the 2019. On 27.10.2021, the trial magistrate rejected the prosecution’s application to withdraw the charge under section 87(a) and instead acquitted them under section 206 of the Criminal code.
11. An acquittal shields an accused person from being charged again for the same offence. Under the rights of an accused person under the Article 50, an accused person has a right “not to be tried for an offence in respect of an act or omission for which the accused person has previously been either acquitted or convicted.”(Article 50 (2) (o).
12. Equally section 138 of the [criminal procedure code](#) provides: - “A person who has been once tried by a court of competent jurisdiction for an offence and convicted or acquitted of that offence shall, while the conviction or acquittal has not been reversed or set aside, not be liable to be tried again on the same facts for the same offence.”
13. The above two provisions constitute a prohibition of double jeopardy. In the case of [Republic v Danston Mugunya](#) (2016) KCEA 59(KLR) the doctrine of double jeopardy was explained as follows: “First the plea of autrefois acquit or a former acquittal, is grounded on the universal maxim of the Common Law of England that no man is to be brought into jeopardy of his life, more than once, for the same offence. And hence it is allowed as a consequence, that when a man is once found not guilty upon an indictment, or other prosecution, before any court having competent jurisdiction of the offence, he may plead such acquittal in bar of any subsequent accusation for the same crime.” (Ref William Blackstone in Commentaries on the Laws of England (Vol. 1V 18th Ed. 1829, Chapter XXVI) “



14. I have looked at the charges sheet in Criminal Case Number 385 of 2019 and in criminal case No. E641 of 2023. In both cases, the respondents faced four similar counts as aforesaid, two on forcible entry and two on forcible detainer, the properties that were forcefully entered or retained are the same, that is Block 1/159 and Block 1/160. The owners are Dida Hussein Dado and Amina Hassan Hussein respectively.
15. Thus the charge in Isiolo Criminal number E641 of 2023 which was brought exactly 3 years after the respondents had been constituted case No. 385 of 2019 constituted double jeopardy. It was a violation of the Respondents right under Article 50(2) (o) and ran afoul the provisions of Section 138 of the *Criminal Procedure Code*.
16. In exercising the powers of revision bestowed on the High Court by section 362 – 367 of the *Criminal Procedure Code*, the High Court's mandate is to check any instance of illegality, incorrectness or impropriety on the ruling, orders, proceedings or sentences by the subordinate court.
17. In view of the foregoing, the findings of the trial court that the charge under criminal case No. 641 of 2023 was a case of double jeopardy was correct. The finding was founded on law and was based on the facts presented. This court therefore has no reason to interfere with the finding of the court below.
18. The application is unmerited, it is hereby dismissed.

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

S. CHIRCHIR

JUDGE

In the presence of :

Mr. Ngetich for the 1st Respondent.

