



**Kenya Electricity Transmission Company Limited v Republic; King'oo alias
Karanja & another (Interested Parties) (Criminal Revision Application
E086 of 2025) [2025] KEHC 12836 (KLR) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12836 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL REVISION APPLICATION E086 OF 2025
AK NDUNG'U, J
SEPTEMBER 18, 2025**

BETWEEN

KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED APPLICANT

AND

REPUBLIC RESPONDENT

AND

JOHN MUTUA KING'OO ALIAS KARANJA INTERESTED PARTY

DIRECTORATE OF CRIMINAL INVESTIGATIONS INTERESTED PARTY

RULING

1. The Kenya Electricity Transmission Company Limited, (hereinafter the applicant), moved this court vide the Notice of Motion dated 24th March, 2025, the seeking orders that:
 1. Spent
 2. Spent
 3. This Honourable Court be pleased to call for and examined the Record, Proceedings conviction and Sentence by the Honourable M. Wachira (PM) Principal Magistrate's Court at Rumuruti in Criminal Case No.E310 of 2024. Republic versus Pois Leluata & 2 others for purpose of satisfying itself as to the correctness, legality, or propriety of the plea bargain agreement dated 10th March, 2025 entered into between the prosecution and the 1st Interest Party herein.
 4. This Honourable Court be pleased to revise and set aside the plea bargain agreement dated 10th March, 2025 between the prosecution and the 1st Interest Party herein and the matter to



proceed to full trial on the ground that it was entered into irregularly and unlawfully contrary to the laid down provisions of the law and procedures and through misrepresentation of facts.

5. This Honourable Court be pleased to issue any other order it deems fit to serve the ends of justice and to ensure fair administration of criminal justice.
 6. The costs of this application be provided for.
2. The Application is premised on grounds that:
1. Article 165(6) and (7) of the *Constitution* of Kenya clothes this Honourable Court with supervisory jurisdiction over subordinate courts and to call for the record of any proceedings before any such court for review.
 2. Section 362 of the Criminal Procedure Code also empowers this Honourable Court to examine the record of any criminal proceedings for the purposes of satisfying itself as to the correctness, legality, or propriety of any finding, sentence, or order recorded or passed.
 3. The Applicant is a State Corporation under the Company's Act, Cap 486 wholly owned by the Government and whose mandate is to plan, design, construct, own, operate and maintain high voltage electricity transmission grid and regional power interconnectors.
 4. The Applicant is also the victim and complainant in Criminal Case No, E310 of 2024; Republic versus Pois Leluata and 2 others that is before the Principal Magistrate Court Rumuruti.
 5. On 14th March 2024, the Applicant discovered that energy materials approximated at Kshs. 14,479,560 were stolen at KETRACO Rumuruti sub-station. As a result of the discovery, the Applicant reported the matter at Rumuruti police station vide OB. No. 14/14/03/2024 following which Rumuruti DCI Officers conducted investigations leading to the arrest of the three Accused persons.
 6. The Accused persons in the lower court case were subsequently jointly charged with the offence of conspiracy to commit a felony contrary to section 393 of the Penal Code in count one and the offence Of Stealing Contrary to Section 169(1)(c) of the *Energy Act* No. 1 of 2019 in count two whereby they pleaded not guilty to the said offences.
 7. On 10th March, 2025. when the lower court case came me up for hearing, the 1st Interested Party (being the 2nd Accused person) informed the Court that he had an application for plea bargain and wanted it to be heard on the same day.
 8. On the same day, 10th March, 2025, the prosecutor, one Mr. Limisi, informed the Court that he had consulted with the 2nd accused and the Investigating Officer and had agreed with the 1st Interested Party that he would plead guilty to count and that the state would withdraw count 2. The prosecutor further informed and presented to the Court a plea agreement dated 10th March, 2025 signed by the prosecutor and the 1st Interested Party.
 9. The Court accepted the plea agreement and sentenced the 1st Interested Party to 3 years imprisonment or in the alternative to a fine of Kshs, 200,000.
 10. The plea agreement was however irregular and for not complying with the guidelines set in law regarding plea agreements and the adoption.



11. Section 137 D of the Criminal Procedure Code requires the prosecutor to consult with the victim by affording them or their representative the opportunity to make representations to the prosecutor regarding the contents of the agreement.
12. Similarly, Sections 9 (l)(c) and 20 (l)(b) of the Victims Protection Act afford the victim the right to give their views and submit any information to Court in any plea bargaining and submit any information to the Court during plea bargaining.
13. This right is also envisaged in several other codified guidelines including The Criminal Procedure (Plea Bargaining) Rules of 2018 and the Office of the Director of Public Prosecutions Plea Bargaining Guidelines, 2019 ("ODPP Plea Bargaining Guidelines") which require the prosecutor to inform the victim of the terms and the status of the Plea Agreement and accord them an opportunity to make representations on the plea agreement.
14. Despite these clear provisions of the law, the prosecutor did not accord the Applicant, being the complainant and victim of the offences, the opportunity to make its representations regarding the plea agreement. In fact, the prosecutor admitted to the Court that he had only engaged the 1st Interested Party and the Investigating Officer in regards to the plea agreement therefore admitting to the ignorance of the victim's view.
15. Additionally, while Part 41 of ODPP Plea Bargaining Guidelines requires a prosecutor to inform any other Government agency or regulatory body that has an interest in the accused person on the status of the plea negotiation and- enquire whether they wish to take part in the plea negotiations, the prosecutor did not inform the Applicant, being the victim and a Government agency with key interest in the plea negotiations. This key omission is completely unexplainable, irregular, unjustified and against the laid out guidelines on plea agreements.
16. Furthermore, despite Part 2B of the ODPP Plea Bargaining Guidelines requiring consultation and appraisal of the DPP on the plea agreement before commencement or during negotiations in cases of great public interest that include cases touching on National Security and Public figures, the DPP was not consulted or appraised. This is despite the case involving a major State Corporation that is the Applicant whose role and mandate in operation and maintenance of high voltage electricity transmission grid and regional power interconnectors is key in the economic, social and political environment of the country and of high public importance and interest.
17. Further to this, contrary to Part 2F of the ODPP Plea Bargaining Guidelines, the prosecutor in presenting the plea agreement to Court for endorsement did not consider the impact of the plea agreement on the victim and the community and the prospects of prosecuting any other person implicated in the offences that the Interested Party was accused of. The prosecutor did not consider that the stolen materials were imported and specifically fabricated for specific components that form part of the Energy Transmission network that serves the community and were also worth Kshs. 14,479,560 which was a huge loss to the Applicant and the public.
18. The prosecutor also failed to consider the impact of the plea agreement on the community given that there has been an increase in the number of cases of such nature and the effect of the plea agreement may not act as a deterrence to other persons who may be implicated of the offence but may even encourage them.
19. The prosecutor additionally failed to consider the impact of withdrawing the charge in the second count despite the [Energy Act](#) being enacted to prevent vandalism and theft of materials



used in electricity transmission hence the hefty fine imposed for such offences to act as a deterrence.

20. Despite these glaring omissions and misconduct on the part of the prosecutor, the Magistrates Court entertained the application for plea agreement and proceeded to adopt the same and sentenced the Interested Party to three years imprisonment or to pay a fine of Kshs. 200,000.
 21. The Court did not take time or any effort to satisfy itself that the laid down procedures and law on plea agreements had been adhered to considering the Hon. Magistrate was aware the negotiation was uncharacteristically initiated and concluded within hours. The Magistrates Court did not inquire whether the victim had been informed so as to allow the Applicant make its representations.
 22. The Magistrates Court instead proceeded to accept the plea agreement and pass a sentence based on a plea agreement that was entered into through a flawed, unfair, irregular and unlawful procured.
 23. In fact, while the application for plea agreement was made by the Interested Party on 10th March, 2025, the plea agreement was entered into, signed by the prosecutor and the 1st Interested Party and relied on by the Court in passing its sentence which conduct is highly irregular, unfair and unjust warranting the need for this Court's intervention. There was no justification for the haste process that was involved in acceptance of the plea agreement in breach of established procedures.
 24. Despite the Applicant vide letters dated 13th March, 2025 addressed to the Director of Public Prosecutions and the In-charge of prosecutions Laikipia County bringing to their attention the irregular and unlawful plea agreement that was purportedly negotiated, signed and adopted by the trial court within hours on 10th March, 2025, the same have neither elicited any response nor administrative action to remedy the illegality and injustice as contemplated in law and procedure.
 25. The application has been filed without inordinate delay following the unjustified inaction by the office of the Director of Public Prosecutions despite formal requests and no party shall suffer any prejudice if the criminal case is heard and determined on its merits.
 26. It is fair, just and expedient that the Court invokes its supervisory jurisdiction, hears and determines the application expeditiously and grants the reliefs sought to avert any miscarriage of justice and the sacrifice of the rule of law and proper administration of criminal justice at the altar of legal technicalities.
 27. It is in the interest of justice and fairness that the plea agreement entered into on 10th March, 2025 be terminated and set aside in its entirety on the grounds of misrepresentation and procedural irregularity.
3. Further the application is supported by the annexed affidavit of James Matui sworn on 24th March, 2025.
 4. The application is opposed and the Respondent raises the following grounds of opposition;
 1. That the Application does not meet the legal requisite threshold for the grant of the orders sought.
 2. That the plea bargain entered into, with regard to Criminal case No. E310 2024, on 10th March 2025 at the Rumuruti Law Courts before the Principal Magistrate's court was proper and in



accordance to provisions of Section 137(1) of the Criminal Procedure Code and the ODPP Plea Bargain Guidelines.

3. That the above is supported by the supporting affidavits herein attached sworn by the prosecutor in conduct of the matter, Mr. Limisi I. Oscar dated 4th April 2025 and the investigating officer in conduct of the matter Sgt. Joseph Gikunda dated 7th April 2025.
4. That from the above, the plea bargain process and the agreement thereof was properly conducted within the provisions of Section 137 of the Criminal procedure Code Cap 75; specifically S. 137(1), Section 9(1) (c) and 20 (l) (b) of the of the Victims Protection Act on the requirement to have the victim consulted during a plea bargain process, and the ODPP plea Bargaining Guidelines, 2019.
5. That consequently the sentence passed by the Court was proper, and within the law.
6. That the applicant's allegations are untrue, in bad faith and wrongfully presented before this court,
7. That the state prays that the application herein be dismissed in its entirety.
5. The same is further opposed through the affidavits of Limisi I Oscar and SGT Joseph Gikunda sworn by SGT sworn on 7th April, 2025.
6. The facts in application are straight forward. The 1st Interested party who was jointly charged with 2 others before the principal magistrate Rumuruti with 2 counts, namely, conspiracy to commit a felony contrary to section 393 of the Penal Code and the offence of stealing contrary to section 169(1)(c) of the Energy Act No. 1 of 2019, appeared before court for hearing on 10th March 2025.
7. He made an application for plea bargain. Despite the DPP applying to have 1 week to consider the plea bargain, the court directed that the plea bargain be considered the same day. In lightning speed, a plea bargain was negotiated, agreed upon and a written plea bargain signed and presented to court in the afternoon and adopted by the court.
8. The applicant who is the complainant in the matter is aggrieved by the conduct of the proceedings for reasons afore stated in the grounds and affidavit and invokes the powers of the court under Article 165(6) and (7) of the Constitution of Kenya and Sections 362 and 364 of the Criminal Procedure Code which grant this court with supervisory jurisdiction over subordinate courts.
9. Of determination is whether the application achieves the legal threshold for the exercise of the review powers of the court and if in the affirmative what orders should issue.
10. The powers of the court to review the orders of subordinate courts in criminal proceedings are well pronounced both under the Constitution and statute and our courts have ably interpreted the law and set clear parameters for the court's exercise of review of subordinate court's proceedings/orders.
11. In *Prosecutor vs Stephen Lesinko* [2018] eKLR, Nyakundi J held;

It is plain from the above passage that the High Court is vested into wide revisionary powers to look into the orders, decisions, proceedings, sentences where any of the following circumstances manifest themselves.

 - a. Where the decision is grossly erroneous
 - b. Where there is no compliance with the provisions of the law.....



12. Odunga J (as he then was) weighed in on the matter in *Joseph Nduvi Mbuvi v Republic* [2019] EKLK, where he stated;

“A strict reading of section 362 of the Criminal Procedure Code, however, does not expressly limit the High Court’s revisionary jurisdiction to final adjudication of the proceedings. The section talks of “any criminal proceedings”. “Any criminal proceedings” in my view includes interlocutory proceedings. Suppose a subordinate court would be minded to make an absurd decision of commencing a criminal trial by directing the accused to give evidence before the prosecution, I do not see why the High Court cannot call the proceedings in question to satisfy itself as to the correctness, regularity or legality of such order. 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.

13. In this matter, and from the very clear facts, the proceedings are tainted with discernable irregularities and non-compliance with the law and the applicant has clearly demonstrated this. I indeed fall back onto the facts as set out in the grounds in support of the application and reach conclusions as hereinafter.
14. The plea agreement was for inexplicable reasons a hurried one, sought the same day, negotiated within hours, agreed upon and signed, presented to court the same day, adopted and case concluded through a conviction and sentence, again, on the same day. There was no pretense whatsoever of the parties or the court attempting to comply with the guidelines set in law regarding plea agreements and the adoption.
15. Contrary to the provision in Section 137 D of the Criminal Procedure Code there was no consultation by the prosecutor with the victim of the offence, a public corporate body, to give it an opportunity to make representations to the prosecutor regarding the contents of the agreement. The presence of Jonah Maritim in the court room and who only had come to testify is not tantamount to consulting the complainant. In any event the court record as per the address of court by the prosecutor clearly shows he only consulted the 1st Interested Party and the DCI. Further, the charges facing the 1st Interested Party were not a personal issue which Jonah had the wherewithal to deal with arbitrarily without consulting the complainant. No evidence is shown that he had authority of the company to sanction the terms of the plea agreement.
16. In *Republic v Farah alias Isa*, [2024] KEHC 15725 the court (Kimondo J) drew clear parameters that need to be complied with. He stated;

“However, the DPP cannot enter into such negotiations without consultations with the victim’s family. This is important because under section 137A of the Criminal Procedure Code the plea agreement may provide for the payment by an accused person of any restitution or compensation. Furthermore, there is an explicit decree for consultation with the victims in section 137D of the Criminal Procedure Code which provides that: A



prosecutor shall only enter into a plea agreement in accordance with section 137A —a. after consultation with the police officer investigating the case; b. with due regard to the nature of and the circumstances relating to the offence, the personal circumstances of the accused person and the interests of the community; c. unless the circumstances do not permit, after affording the victim or his legal representative the opportunity to make representations to the prosecutor regarding the contents of the agreement. [underlining added].

18. This right is reinforced further by section 9 of the Victims Protection Act which states:9.(1)A victim has a right to-(a)be present at their trial either in person or through a representative of their choice;(b)have the trial begin and conclude without unreasonable delay;(c)give their views in any plea bargaining.....[underlining added]”.

17. Further, the charges facing the 1st interested Party were not a personal issue which Jonah had the wherewithal to deal with arbitrarily without consulting the complainant. No evidence is shown that he had authority of the company to sanction the terms of the plea agreement. The complainant is a corporate body. The law recognizes it as a victim. Thande J in *Odhiambo v Attorney General & 2 Others; Nyanchoga (Interested Party)* KEHC 354 reaffirmed the position stating;

“All victims of offences whether natural or juristic persons suffer as a result of offences committed against them. It cannot be said that juristic persons are not in any need of protection under the law. Indeed, under article 27(1), juristic persons, being persons within the meaning of article 260, are equal before the law and are entitled to equal protection and equal benefit of the law. Thus, the impugned definition has the effect of treating juristic persons differently, without reasonable justification yet they, like natural persons suffer as victims of offences. This differential treatment amounts to unfair discrimination, which is prohibited by the Constitution.

34. As a result of this unfair discrimination, juristic persons which are victims of offences are denied the rights available under Part III and victim services under Part IV of the VPA, which are available to their counterparts who are natural persons. These rights and services include inter alia being permitted by the court under section 9, to have their views and concerns presented and considered at stages of the proceedings as deemed appropriate by the court; adducing, either in person or through an advocate, evidence that has been left out and to give oral evidence or written submission, as provided under section 13 of the VPA. They are also denied the right to access and participate in the criminal justice process and in restorative justice to obtain reparations under section 14 as well as submitting information to the court for consideration, during plea bargaining, bail hearing and sentencing.....

18. Sections 9 (l)(c) and 20 (l)(b) of the Victims Protection Act that affords a victim the right to give their views and submit any information to Court in any plea bargaining and submit any information to the Court during plea bargaining was ignored.

19. Similarly, The Criminal Procedure (Plea Bargaining) Rules of 2018 and the Office of the Director of Public Prosecutions Plea Bargaining Guidelines, 2019 (“ODPP Plea Bargaining Guidelines”) which require the prosecutor to inform the victim of the terms and the status of the Plea Agreement and accord them an opportunity to make representations on the plea agreement were not adhered to.



20. This is a matter of great public interest. Part 41 of ODPP Plea Bargaining Guidelines requires a prosecutor to inform any other Government agency or regulatory body that has an interest in the accused person on the status of the plea negotiation and enquire whether they wish to take part in the plea negotiations. There is no evidence that the prosecutor did inform the Applicant, being the victim and a Government agency with key interest in the plea negotiations.
21. Furthermore, despite Part 2B of the ODPP Plea Bargaining Guidelines requiring consultation and appraisal of the DPP on the plea agreement before commencement or during negotiations in cases of great public interest that include cases touching on National Security and Public figures, the DPP was not consulted or appraised. This is despite the case involving a major State Corporation that is the Applicant whose role and mandate in operation and maintenance of high voltage electricity transmission grid and regional power interconnectors is key in the economic, social and political environment of the country and of high public importance and interest.
22. Further to this, contrary to Part 2F of the ODPP Plea Bargaining Guidelines, the prosecutor in presenting the plea agreement to Court for endorsement did not consider the impact of the plea agreement on the victim and the community and the prospects of prosecuting any other person implicated in the offences that the Interested Party was accused of. The prosecutor did not consider that the stolen materials were imported and specifically fabricated for specific components that form part of the Energy Transmission network that serves the community and were also worth Kshs. 14,479,560 which was a huge loss to the Applicant and the public.
23. The prosecutor also failed to consider the impact of the plea agreement on the community given that there has been an increase in the number of cases of such nature and the effect of the plea agreement may not act as a deterrence to other persons who may be inclined to commit the offence.
24. Despite these glaring omissions and misconduct on the part of the prosecutor, the Magistrates Court entertained the application for plea agreement and proceeded to adopt the same and sentenced the Interested Party to three years imprisonment or to pay a fine of Kshs. 200,000.
25. It is manifestly clear that the court failed to satisfy itself that the laid down procedures and law on plea agreements had been adhered to considering the Hon. Magistrate was aware the negotiation was uncharacteristically initiated and concluded within hours. The Magistrates Court did not inquire whether the victim had been informed so as to allow the Applicant make its representations.
25. This omission renders the proceedings irregular for failure to comply with the law and this renders the proceedings amenable to the review jurisdiction of the court.
26. With the result that the application succeeds. I make the following orders;
 - a. The proceedings of the court in Rumuruti Principal Magistrate Court Criminal Case No. E310 of 2024, Republic versus Pois Leluata & 2 Others (Before Hon. M. Wachira-PM) and specifically the adoption of the Plea bargain agreement dated 10th March 2025 is hereby reviewed and set aside and the orders of court on the conviction and sentence of the 1st Interested Party set aside and substituted thereof with an order that the matter do proceed to full trial before any Magistrate other than M. Wachira PM.
 - b. That in view of the delay in this matter arising from the prosecution of this application, the matter be heard on a priority basis.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 18TH DAY OF SEPTEMBER, 2025.

A.K. NDUNG’U



JUDGE

