



**DN v Republic (Criminal Revision E208 of 2025)  
[2025] KEHC 13217 (KLR) (24 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13217 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CRIMINAL REVISION E208 OF 2025  
RM MWONGO, J  
SEPTEMBER 24, 2025**

**BETWEEN**

**DN ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**The Charges**

1. The applicant was charged with 2 counts: malicious damage of property contrary to section 339(1) of the Penal Code and creating disturbance in a manner likely to cause a breach of peace, contrary to section 95(1)(b) of the Penal Code.
2. When he was arraigned, he pleaded guilty to the charges and was convicted on his own guilty plea. He was sentenced to 3 years imprisonment on the 1<sup>st</sup> count and 3 months imprisonment on the 2<sup>nd</sup> count.

**The Application**

3. He filed this notice of motion dated 21<sup>st</sup> March 2025, in which he is seeking the following orders:
  - a. The honourable court be pleased to revise the judgment by Hon. S.K. Ngii in Siakago MCCR E508 of 2024;
  - b. The conviction and sentence be set aside and the applicant be discharged in respect of the proceedings against him and he be released from custody unless otherwise lawfully held;
  - c. The applicant to continue with treatment;
  - d. Costs of the application be in the cause; and
  - e. Any other orders as the court may deem fit.



4. The application is premised on grounds that the applicant pleaded guilty and he was sentenced. That at the time of taking plea and sentencing, the applicant was mentally ill but the court was not informed on such mental incapacity. That the applicant has lucid moments and sometimes he experiences flare-ups from his mental illness.
5. In a supporting affidavit sworn by the applicant's wife, she stated that the applicant suffers from a mental condition that was diagnosed by a psychiatrist. The condition predisposes the applicant to violence and flagrant conduct and it is exacerbated by substance use and intoxication. She stated that this information was not captured by the trial court and so it is necessary that the revision be granted.

### **Grounds of Opposition**

6. The respondent filed grounds of opposition through which it stated that no wrong principles were applied by the trial court to warrant revision of its orders. That the findings of the trial court on conviction and sentence are not illegal.

### **Parties' Submissions**

7. The application was canvassed by way of written submissions.
8. The applicant submitted that under Articles 50(1) and 165(6&7) of *the Constitution*, the court has jurisdiction to entertain the application. That the information relating to the applicant's mental incapacity was not produced before the trial court because when he was arraigned, none of his family members were present to disclose this matter hence the court did not get a chance to order for mental assessment to be done. He relied on the case of *Wakesho v Republic* [2021] KECA 223 (KLR).
9. The respondent relied on sections 362-366 of the Criminal Procedure Code where the jurisdiction of the High Court for revision is established. It also relied on section 339(1) of the Penal Code and the cases of *PMM v Republic* (2018) eKLR and *Shadrack Kipkoech Kogo v R. Eldoret Criminal Appeal No.253 of 2003* and stated that the sentence imposed upon the applicant is legal and prescribed in law.

### **Issue for Determination**

10. The issue for determination is whether the trial court's findings should be revised.

### **Analysis and Determination**

11. The applicant seeks to have the findings of the trial court set aside because he was allegedly mentally ill at the time of taking his guilty plea and during sentencing. The argument is that the fact of his mental illness was not presented before the trial court because none of his family members who could speak to his condition was present in court at the time of arraignment.
12. The revisionary power of the High Court is drawn from Article 167(6)&(7) 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 not 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.”

13. Section 362 of the Criminal Procedure Code provided as follows on the High Court’s supervisory jurisdiction:

“The High Court may call for 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.”

14. The applicant pleaded guilty to both charges. The facts were read out to him and he admitted them. It followed that he was convicted on his own guilty plea. The court noted that he was not a first offender and he had been placed on probation before over another offence. In mitigation, he stated that he sought forgiveness since he was drunk at the time of the incident. He was sentenced to 3 years imprisonment on the 1<sup>st</sup> count and 3 months imprisonment on the 2<sup>nd</sup> count.
15. The proceedings as recorded by the trial court do not disclose any irregularity or illegality. The procedures followed are within the law in achieving the conviction and proper discretion was exercised towards sentencing. The High Court’s revisionary powers are limited to the proceedings before the trial court and not to information or facts that could have been presented before that court but were never presented there. The record is examined as it is and not as it ought to have been.
16. However, the applicant’s wife has now seeks to challenge the guilty plea, indicating the it was not unequivocal on grounds of the applicant’s mental illness. If there was an issue of the applicant’s mental illness, it was the duty of the applicant to raise it in order to allow the trial court a chance to interrogate it. This did not happen and it could be the case that he was not able to fathom that he was belabouring under such illness. Without this knowledge, therefore, the trial court cannot be held to have reached an erroneous or irregular finding on conviction and sentence. However, the court herein is bound to examine whether the guilty plea was not unequivocal on account of the applicant’s mental illness.
17. The applicant produced copies of a medical report dated 22<sup>nd</sup> May 2024 authored by Dr. John Gatere indicating that the applicant had been a patient at the medical facility following psychotic tendencies. There is also a letter dated 07<sup>th</sup> March 2024 by Dr. Sheila Shavulimo of Embu Level 5 Hospital stating that since January 2024, the applicant was a patient at the hospital for management of acute psychotic disorder and at the time, he was undergoing medication and follow up treatment. This letter was accompanied by treatment notes from the same hospital.
18. According to the charge sheet dated 26<sup>th</sup> June 2024, the applicant was arrested on that day for an offence that occurred 3 days prior to arrest. From the evidence adduced, the applicant was suffering from a mental illness shortly before he committed the offences. The medical reports show that he was under follow up treatment as late as May 2024, one month before the offences.
19. In the case of Patrick Muchiri Mwangi v Republic [2020] KEHC 5404 (KLR), the court stated;
- “...whether a guilty plea is unequivocal or not depends on the circumstances of the case. Differently put, an appellate or a revising court must take the totality of circumstances into account in determining the equivocality or otherwise of a guilty plea... The only mental conditions on an Accused Person which would vitiate an otherwise unequivocal guilty plea are those that would verge on his sanity as defined by law and those verging on duress or undue influence.”



20. From the evidence adduced, the trial court ought to have been given a chance to examine the applicant's mental illness through calling for medical examination to that effect. This was not possible because the trial court did not know of the matter neither was it necessary to order for mental examination on the applicant. Therefore, given the possibility that the applicant's mental state so soon before he was charged was in question, it is also possible that the guilty plea was not unequivocal. That probability should be credited to the benefit of the offender.

### **Conclusions**

21. Given the circumstances, it is necessary that a retrial be ordered. This is because it is not the prosecution's fault that the information on the applicant's mental illness was not relayed to the trial court. The trial court also did not know of the mental illness at the time of plea taking. In the case of *Fatehali Manji v Republic* [1966] EA 343 the Court of Appeal when dealing with the same issue, gave the following guideline: -

“In general a retrial will be ordered only when the original trial was illegal or defective; it will not be ordered when the conviction is set aside because of insufficiency of evidence or for the purpose of enabling the prosecution to fill up gaps in its evidence at the first trial; even where a conviction is vitiated by a mistake of the trial court for which the prosecution is not to blame, it does not necessarily follow that a retrial should be ordered; each case must depend on its own facts and circumstances and an order for a retrial should only be made where the interests of justice require it.” (See *Philip Kipngetich Terer -vs- Republic* [2015] eKLR)” [Emphasis added]

### **Disposition**

22. In light of the foregoing, I think the application should be allowed. The conviction and sentence of the trial court on both charges are hereby set aside.
23. Given the medical evidence adduced herein, the matter is hereby referred back to the trial court for retrial before a different magistrate who shall order that a mental examination be conducted on the applicant before plea taking. Plea should be taken a fresh.
24. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 24<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**R. MWONGO**

**JUDGE**

Delivered in the presence of:

Applicant – Present at Mwea Prison

Ms. Gachungi for the Applicant

Ms. Nyika for the Respondent

Francis Munyao - Court Assistant

