



**Nyakundi v Republic (Miscellaneous Criminal Application
37 of 2014) [2024] KEHC 6 (KLR) (11 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 6 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL APPLICATION 37 OF 2014
RN NYAKUNDI, J
JANUARY 11, 2024**

BETWEEN

DAVID ORWARU NYAKUNDI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Coram : Before Justice R. Nyakundi

Mr. Mugun for the State

1. The petitioner filed a Notice of Motion dated 6.2.2014 expressed Under Art. 50(6) (A) and (B) and 23 (Supervisory and Jurisdiction and Protection of fundamental Rights and Freedom of an Individual *High Court Practice and Procedure Rules* 2006 and the Inherent Powers of the High Court. Raising grievances on non-availability of the trial record to capacitate him to file an appeal on conviction and sentence arising out of PM'S Court Kapsabet Cr. Case No 1519/2012. The court directed the Deputy Registrar to avail the original record to facilitate considerations of the issues raised in the Notice of Motion. In absence of the record, it is noted the court has no opportunity to second guess the trial court impugned judgement. Of course a court judicature is unlikely to stray into independent research of adjudicative facts without the model of the record as what transpired in the primary proceedings. There is not a new issue for the court to consider save for the structured facts in the Notice of Motion and the affidavit in support. The record review rule helps to define the very nature of an appellate court's and the appellate process jurisdiction. The most commons message that flows from the record aids the court in its consideration of the case on matters raised in the Notice of Motion. That is not the case in the instant motion.
2. In light of the above, the Misc. File No. 37 of 2014 be marked as formally closed.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 11TH DAY OF JANUARY 2024.



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R. NYAKUNDI

JUDGE

