



**Odhiambo & another v Republic (Criminal Revision E807 of 2023)
[2024] KEHC 2 (KLR) (Crim) (8 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 2 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E807 OF 2023
K KIMONDO, J
JANUARY 8, 2024**

BETWEEN

KEVIN OPIYO ODHIAMBO 1ST APPLICANT

DERRICK ODHIAMBO HASSAN 2ND APPLICANT

AND

REPUBLIC RESPONDENT

(Revision from the proceedings in Makadara Criminal Case No. E5910 of 2023 before I. Gichobi, Principal Magistrate, on 5th October)

RULING

1. The revision was requested by the learned trial magistrate on October 5, 2023. The lower court file was however not forwarded to the High Court until November 15, 2023.
2. On December 6, 2023, the matter was listed for directions before the High Court. The 1st applicant, and who is the only one affected by this revision, appeared virtually. Learned prosecution counsel, Ms. Oduor, as well as learned counsel for the applicant, Ms Achieng, also logged into the session.
3. Being a revision, and by dint of section 365 of the *Criminal Procedure Code*, no party has a right to be heard either personally or by an advocate before the High Court when exercising its powers of revision. The ruling was thus reserved to chambers.
4. The 1st applicant, and who was the 1st accused in the lower court, pleaded guilty to Count III of having suspected stolen property contrary to section 323 of the *Penal Code*. The property in question was a digital school tablet bearing the Government of Kenya logo. The facts were read out on October 5, 2023 and he accepted them to be true. A final plea of guilt was accordingly entered.



5. However, and quite irregularly in my view, the prosecutor called a witness, Millicent Cherotich, to the stand whose sworn evidence was that the tablet belonged to her father who is a teacher, and that the witness had given it to the 1st accused. In a nutshell, her evidence was meant to exonerate the 1st accused. The learned trial magistrate thus found herself in a quandary as she had already convicted the accused.
6. In view of the orders that I propose to make, I will not comment any further about the charge or its merits. article 165 (6) of *the Constitution* confers the High Court with supervisory jurisdiction over all subordinate courts. Furthermore, and, by dint of sections 362 to 364 of the *Criminal Procedure Code*, the High Court is imbued with wide powers to review the orders of the learned trial magistrate.
7. I note that at the point when the aforementioned witness led her evidence, the 1st accused had not yet been sentenced on Count III. I have already found that the evidence was highly irregular given that that the 1st accused had pleaded guilty on that count. In the interests of justice, I set aside the address made by the prosecutor on October 5, 2023 immediately following the final plea of guilty by the 1st accused. I also set aside the entire testimony of Millicent Cherotich made on even date. I direct instead that Count III be now read afresh to the 1st accused. Needless to say, if he denies the charge, a trial shall be held before any magistrate other than I. Gichobi, Principal Magistrate.
8. The lower court file shall now be remitted back to the trial court together with a certified copy of this ruling. The Deputy Registrar shall also notify the 1st applicant and the Republic of this order.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF JANUARY 2024.

KANYI KIMONDO

JUDGE

Ruling read in chambers in the presence of-

Mr. E. Ombuna, Court Assistant.

