



**Mbararia v Director of Public Prosecutions (Revision Case
E289 of 2022) [2024] KEHC 966 (KLR) (6 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 966 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
REVISION CASE E289 OF 2022
GMA DULU, J
FEBRUARY 6, 2024**

BETWEEN

WILLIAMSON MBARARIA APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

RULING

1. Before me is a request for revision brought by way of Notice of Motion dated 29th September 2022 through counsel Mwakesi Ronoh & Associates Advocates filed under Article 165(6) and (7), Article 50(20)© and (j) of *the Constitution* of Kenya and Section 362 of the *Criminal Procedure Code* (Cap.75).
2. The application seeks the following orders:-
 1. (Spent).
 2. The court file in Principal Magistrate's Court Case No. E97 of 2020 be transferred to the High Court at Voi for further orders.
 3. The proceedings in Voi Magistrate's Criminal Case No. E97 of 2020 Republic =Versus= William Mbararia be stayed pending the hearing and determination of the application.
 4. The court be pleased to issue revisionary orders to review and set aside the criminal trial in Voi Principal Magistrate's Court No. E097 of 2020 Republic =Versus= William Mbararia.
3. The application has grounds on the face of the Notice of Motion that there are manifest illegalities and inconsistencies and impropriety that the trial court deprived the accused the right to fair hearing, that the trial violated and deprived the accused the right to information; and that the trial was procedurally unfair.



4. The application was filed with a supporting affidavit sworn on 20th September 2022 by the applicant Williamson Mbararia deponing that he did not cross-examine the other witnesses, nor was he given the statements of the three (3) named witnesses. That through an order of this court, 3 witnesses were recalled who testified when his lawyer was absent, and that a witness called Benson Mwakio Mwango who was not in the list of witnesses testified against him, and that he was not allowed to know what that witness was coming to say in court, and that he was 74 years old.
5. The application was opposed through grounds of opposition filed by the Director of Public Prosecutions, which are as follows:-
 1. The application is an abuse of the court process.
 2. The applicant has not demonstrated any irregularity, illegality or impropriety in the criminal proceedings before the Principal Magistrate's Court.
 3. The applicant has failed to demonstrate sufficient grounds to warrant issuance of the orders sought.
 4. The applicant was given a fair hearing by the trial court. He was allowed to cross-examine the witnesses who testified save for PW2 Beatrice Wanjiku Kinyua, who is deceased. The applicant elected not to cross-examine PW3 Delphine Mwazo, when invited to do so. Therefore, this cannot be a basis by the applicant to seek setting aside of proceedings on the ground of lack of fair trial.
6. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Mwakesi Ronoh & Associates Advocates for the applicant, as well as the submissions filed by the Director of Public Prosecutions. I have also perused the record of the trial court.
7. This is a request for revision of the proceedings of a subordinate court under Section 362 of the [Criminal Procedure Code](#) (Cap.75). The parameters under which this court can issue revision orders in criminal matters are set out in that section. I have been availed the Magistrate's court file and proceedings, the subject of this application.
8. I note from the written submissions of counsel for the applicant, that counsel has states as follows:-

“Counsel was able to cross-examine the witnesses who testified, save for PW2 who is deceased. When PW3's turn came and while referring to the charge sheet, I was expected that Delphine Mwakio would step into the witness chamber. However, the proceedings at page 24 were at variance with the information in the charge sheet. Typed proceedings indicate the witness as Benson Mwakio Mwanyao who lives in Sikujua Voi. At this point, this instant revision was midwifed.”
9. Thus though in the application and supporting affidavit it is claimed that the applicant was denied witness statements and a right to cross-examine to justify the request herein to set aside all the criminal proceedings herein, it is apparent from the submissions of counsel that he himself declined to cross-examine a witness because of a variance of name.
10. In my view, this application has no merits and is for dismissal. Firstly, people can have many names. Besides, mistakes can occur in court records or even any other proceedings.
11. Thus if the name of the witness was different from the one expected, the right of an accused person or his counsel is to ask questions in cross-examination to confirm the identity and possibly refer to the



correct witness to discredit the evidence of the strange witness to discredit that witness. It cannot be a basis for setting aside the entire criminal proceedings.

12. With regard to the constitutional right to avail the defence with the prosecution witness statements, that is the obligation of the State or Director of Public Prosecutions and failure to do so cannot be blamed on the courts or be a basic for setting aside the criminal proceedings.
13. I will thus decline to issue any revision orders herein as requested. In my view, if the accused or his advocate wishes to cross-examine PW3, they can do so. They can also choose not to cross-examine that witness, and in both situations, they are at liberty to revisit that issue in their defence, as well as in their final submissions, for the trial court to consider the strength or weakness of the prosecution case.
14. The application for revision is disallowed. I order that the criminal trial in the Magistrate's court herein will proceed without further delays, and in this regard the trial court file is hereby returned to the trial court forthwith.

DATED, SIGNED AND DELIVERED THIS 6TH DAY OF FEBRUARY 2024 AT VOI IN OPEN COURT.

GEORGE DULU

JUDGE

In the presence of:

Alfred/Trizah – Court Assistants

Mr. Sirima for State

