



**ODPP v Abuto (Criminal Revision E071 of 2024)  
[2024] KEHC 4680 (KLR) (3 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4680 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL REVISION E071 OF 2024  
RE ABURILI, J  
APRIL 3, 2024**

**BETWEEN**

**ODPP ..... APPLICANT**

**AND**

**ROSEMARY ATIENO ABUTO ..... RESPONDENT**

*(From the original Kisumu Chief Magistrate's  
Court Criminal Case No. E202 of 2020 at Kisumu)*

**RULING**

1. This file was opened on 26<sup>th</sup> March 2024 following the order issued on 26<sup>th</sup> March 2024 by Hon. Dr. D. Ogoti, Chief Magistrate in Kisumu Chief Magistrate Criminal Case No. E202 of 2020 - Republic versus Rosemary Atieno Abuto.
2. The order followed the Ruling by the Hon. Chief Magistrate wherein he, in the case before him, rendered a ruling on a case to answer against the accused person on 26<sup>th</sup> February 2024 based on one charge or count only as per the initial charge sheet dated 27<sup>th</sup> November 2020.
3. Immediately the Ruling was delivered, the prosecution counsel reminded the court that there was an amended charge sheet, which had more counts and which the trial court had not considered in the Ruling of 26<sup>th</sup> February 2024.
4. That latter charge sheet is dated 16<sup>th</sup> June 2021 and it has four counts as shown by the annexure to the Ruling of 26<sup>th</sup> March 2024 submitted to this court.
5. The trial court therefore invoked the provisions of Sections 362 and 364 of the *Criminal Procedure Code* and directed that the file be placed before me to exercise revisionary jurisdiction in respect of the cited provisions, so that the trial court can proceed to deliver a wholesome ruling on the four counts facing the accused person.



6. I cannot agree more that there was an inadvertent error on the face of the record when the trial court rendered a ruling on a case to answer based on one count of a charge sheet which had been substituted much earlier, thereby leaving out the other three counts yet the evidence adduced was in reference to the four counts as per the amended charge sheet of 16<sup>th</sup> June 2021.
7. That being the case, and pursuant to the Provisions of Section 362 and 364 of the [Criminal Procedure Code](#), I hereby exercise supervisory revisionary jurisdiction vested in the High Court vide Article 165 (6) and (7) of the [Constitution](#) as read with Sections 362 – 365 of the [Criminal Procedure Code](#) and call into this court and revise the Ruling and order made on 26<sup>th</sup> February 2024 by Hon. Dr. D. Ogoti on case to answer and set it aside.
8. I substitute thereto with an order quashing that Ruling and order and direct the trial court to set a date for delivery of a fresh ruling on whether the accused Rosemary Atieno Abuto has a case to answer on all the 4 counts as per the amended charge sheet as the prosecution had already closed its case.
9. This Ruling to be typed and send to the trial court together with the lower court file for further necessary action as directed herein above.
10. This file is closed.
11. I so order.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 3<sup>RD</sup> DAY OF APRIL, 2024**

**R. E. ABURILI**

**JUDGE**

