



**Kariuki v Republic (Criminal Revision E161 of 2023)
[2024] KEHC 11659 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 11659 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL REVISION E161 OF 2023**

M MUYA, J

JUNE 6, 2024

BETWEEN

PETER WACHIRA KARIUKI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of threatening to kill contrary to Section 233(1) of the [Penal Code](#).
2. The particulars being that on 31st day of October, 2023 at around 1100 hours at Karandi Village, Gikondi Location in Mukurweini Sub-County, Nyeri County without lawful excuse, uttered words “utakufa leo” to Mary Nyambura Harrison while armed with a panga.
3. The matter was set down for hearing on 21st November, 2023 when the defence counsel informed the court that the complainant wished to withdraw the case as parties had reconciled.
4. The prosecution did not oppose the application for withdrawal of the case even though they had four witnesses lined up for hearing.
5. The court rejected the application on the grounds that Section 124 and 176 of the [Criminal Procedure Code](#) were not applicable in the circumstances of the present case.
6. The High Court is clothed with supervisory powers over Subordinates Courts under Article 165 of the [Constitution](#).



7. For purposes of review the powers are provided for under Section 362 of the Criminal Procedure code thus:-

“The High Court may call for and examine the record of Criminal Proceedings before any subordinate court for the purposes of satisfying itself as to the correctness, legality or propriety, sentence or order recorded or passed and as to the regularity of any proceedings of any such Subordinate Court”

8. Article 159 (1)(c) of the Constitution Provides, in exercising Judicial authority, the courts and tribunals shall be guided by the following principles:-

9.

- a. Justice shall be done to all, irrespective of status.
- b. Justice shall not be delayed.
- c. Alternative forms of dispute justice resolution, including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted subject to clause 3.
- d. Justice shall be administered without undue regard to procedural technicalities and
- e. The purpose and the principles of the Constitution shall be Protected and Promoted.

10. The trial magistrate declined the request of the withdrawal of the case citing Sections 124 and 176 of the Criminal Procedure Code as not applicable.

11. By doing so she went against the constitution which requires the Promotion of alternative forms of dispute resolution.

12. This denial was also against the current policy of operationalizing the provision of alternative justice systems.

This application is conceded.

13. I find that this is a good case for revision under the provisions of Section 362 of the Criminal Procedure Code. The denial by the learned magistrate of withdrawal of the case for purposes of reconciliation is accordingly revised. The withdrawal is allowed.

RULING READ AND DELIVERED IN OPEN COURT THIS 6TH DAY OF JUNE, 2024 IN PRESENCE OF:-

Miss Mwende for the Applicant

Miss Kaniu for the Prosecution

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M. MUYA

JUDGE

