



**Muthoni v Attorney General & another (Criminal Revision  
E076 of 2023) [2024] KEHC 9786 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9786 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CRIMINAL REVISION E076 OF 2023  
DKN MAGARE, J  
JULY 25, 2024**

**BETWEEN**

**SIMON MATHENGE MUTHONI ..... APPLICANT**

**AND**

**ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This is a ruling over a Notice of Motion application dated 7/12/2023 by the Applicant seeking review of the orders of the lower court dated 2/11/2023 in Nyeri CMCRC No. 827 of 2009.
2. The orders I note are said to have declined to release motor vehicle registration No. KCH 763L to the Applicant.
3. The application is supported by the Affidavit of the Applicant and it was deposed in material as follows:
  - a. The Applicant was being punished for the mistake of the prosecution.
  - b. The motor vehicle is the only source of livelihood.

**Analysis**

4. The court has considered the application. The issue is whether the order dated 2/11/2023 should be revised and the impugned motor vehicle released to the Applicant.
5. The revisionary powers of this court are set out under the law. Under Section 362 of the *Criminal Procedure Code* it is provided as follows:

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or



propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

6. Further, Section 367 of the *Criminal Procedure Code*, on the other hand, provides as hereunder:

When a case is revised by the High Court it shall certify its decision or order to the court by which the sentence or order so revised was recorded or passed, and the court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified, and, if necessary, the record shall be amended in accordance therewith.

7. I note that the Applicant did not place sufficient material before this court to justify the grounds in the application. The record before court is scanty and bereaved. The purported ruling and orders were not attached. The court is unable to discern the purpose for which the motor vehicle was retained. Was it to be used as an exhibit when the case was ongoing? The answer is best known to the Applicant.

8. In of the High Court of Malaysia in *Public Prosecutor vs. Mubari bin Mohd Jani and Another* [1996] 4 LRC 728 at 734, 735 it was stated as doth:

“The powers of the High Court in revision are amply provided under section 325 of the Criminal Procedure Code subject only to subsections (ii) and (iii) thereof. The object of revisionary powers of the High Court is to confer upon the High Court a kind of “paternal or supervisory jurisdiction” in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice...If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion...This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammelled and free, so as to be fairly exercised according to the exigencies of each case”

9. In the circumstances, I am unable to find reason to interfere with the discretion of the trial magistrate.

#### **Determination**

10. I therefore make the following orders: -

- a. The application is dismissed.
- b. The file is closed.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 25<sup>TH</sup> DAY OF JULY, 2024. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**

**JUDGE**

In the presence of:-

Ms. Kaniu for State

Applicant present

Court Assistant – Jedidah

