



**Kirigo v Republic (Criminal Revision E1462 of 2024)
[2024] KEHC 10792 (KLR) (Crim) (19 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10792 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E1462 OF 2024
K KIMONDO, J
SEPTEMBER 19, 2024**

BETWEEN

MARY WAIRIMU KIRIGO APPLICANT

AND

REPUBLIC RESPONDENT

*(Revision from the proceedings in Milimani Criminal Case No. E1295 of 2021
before Hon G. Onsarigo, Senior Resident Magistrate, on 12th September 2024)*

RULING

1. The revision was requested by the learned trial magistrate on 12th September 2024.
2. There have been successive trial magistrates in the lower court. The last prosecution witness (PW5) testified on 4th October 2023 before Hon. A. Nyoike, SPM. The learned trial magistrate directed that the proceedings be typed to enable her to pen a ruling.
3. However, following her transfer, the matter was taken over by Hon. S. Shitubi, CM and later by Hon. G. Onsarigo, SRM. It is instructive that on the accused on all those occasions elected to proceed from where the matter had reached.
4. On 19th February 2024, Hon. G. Onsarigo, SRM then fixed the matter for defence hearing on 15th March 2024 on which date he proceeded to hear the accused on her sworn testimony. Submissions were later filed and the matter set down for judgment on 12th September 2024. On the latter date, the trial magistrate realized that no ruling placing the accused on her defence was ever made and referred the matter to the High Court for revision.



5. 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.
6. Section 210 of the *Criminal Procedure Code* provides as follows-

“If at the close of the evidence in support of the charge, and after hearing such summing up, submission or argument as the prosecutor and the accused person or his advocate may wish to put forward, it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence, the court shall dismiss the case and shall forthwith acquit him.”
7. I thus readily find that it was unlawful and highly irregular to proceed with the defence by the accused before the court determined whether the prosecution had established a case sufficient to call for a rebuttal from her. It also violated her right to a dismissal of the charge at that stage.
8. It follows that the revision is merited. I thus order that all the proceedings of the lower court from 19th February 2024 to 15th July 2024 be and are hereby declared a nullity and are expunged from the record. Instead, the trial court shall first make a determination whether at the close of the prosecution’s case, a prima facie case was made out or not.
9. 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 accused and the Republic of this order.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2024.

KANYI KIMONDO

JUDGE

Ruling read in chambers in the presence of-

Mr. E. Ombuna, Court Assistant.

