



**Bett v Republic (Criminal Revision E075 of 2024)  
[2024] KEHC 12390 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12390 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL REVISION E075 OF 2024  
JK SERGON, J  
OCTOBER 17, 2024**

**BETWEEN**

**EVANS BETT ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged with the offence of malicious damage to property contrary to section 339 (1) of the Penal Code. The facts of the offence being that on the 22nd day of September, 2021 at Brooke Centre in Kericho East Sub County within Kericho County, unlawfully destroyed a pillar of a building valued at Kshs. 50,000/= the property of Joel Kimeto. He pleaded not guilty and the matter proceeded for full hearing.
2. It is against such background, the applicant has moved this court pursuant to the provisions of Sections 362 and 364 of the Criminal Procedure Code. The Applicant has filed a notice of motion dated 30th May, 2024 seeking the following orders;
  - i. Spent
  - ii. Spent
  - iii. That this honourable court be pleased to set aside and revise the orders issued on 20th May, 2024 by Hon. J Bii SRM in the Kericho Chief Magistrate Court Criminal Case No. E3685 of 2021 in closing the applicants case and declining the application for adjournment to avail the only remaining expert witness.
  - iv. That the applicants case be reopened and he be allowed to call his only remaining expert witness to testify.



3. The application is based on the grounds of it and the supporting affidavit of Evans Bett the applicant herein.
4. The applicant avers that he is facing a charge of malicious property before the trial court and further that in his defence, he has some electronic evidence that he is relying on to exonerate himself from the charges preferred and that during the hearing he tried to produce the said electronic evidence to wit photographs and video evidence, however, the same was objected to by the respondent on grounds that they had to be verified by the Director of Criminal Investigation to confirm that they are not edited or photoshopped.
5. The applicant avers that after a lot of frustration he managed to have the electronic evidence verified and a report issued confirming that the photos were not edited.
6. The applicant avers that on 3rd April, 2024 when the matter was coming up for further determination, the court issued summons for the OCS Brooke Police Station and PC John Safari Musembi the only two remaining witnesses.
7. The applicant further avers that on 20th May, 2024 the matter was scheduled for hearing he managed to procure OCS Brooke Police Station who testified and sought for an adjournment on grounds that he faced difficulties in availing PC John Safari to attend court and therefore sought the assistance of the trial court to procure the witness. The adjournment was objected to by the respondent and the court proceeded to close the defence case.
8. It is clear in my mind that the Applicant is entitled to appeal against the order closing the defence case. The applicant is now before this Court asking this Court to exercise its supervisory power of revision to set aside the order of closure of the applicant's case.
9. This Court is barred from entertaining such an application under Section 364(5) of the *Criminal Procedure Code*. In other words, the law does not allow a party who has a right of appeal to personally approach this court for revision.
10. In the end, I find the instant application to be improperly before this Court. The same is ordered struck out with no order as to costs.

**DATED, SIGNED AND DELIVERED THIS 17TH DAY OF OCTOBER, 2024**

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**J.K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant – Rutoh

Prosecutor – Musyoki

Applicant – Present in Person

No Appearance for Kefa for the Applicant

