



**Kahuta & 3 others v Republic (Criminal Revision Application
E206 of 2024) [2024] KEHC 11955 (KLR) (9 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11955 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL REVISION APPLICATION E206 OF 2024**

J WAKIAGA, J

OCTOBER 9, 2024

**IN THE MATTER OF REVISION OF ORDERS ISSUED FROM MURANGA
CHIEF MAGISTRATE'S COURT IN CRIMINAL CASE NO E598 OF 2023**

BETWEEN

**FRANCIS GACHIBU KAHUTA 1ST APPLICANT
JACINTA NJERI MAINA 2ND APPLICANT
PETER KARANJA IRUNGU 3RD APPLICANT
HANNAH WAIRIMU IRUNGU 4TH APPLICANT**

AND

REPUBLIC RESPONDENT

RULING

1. By an application dated 17th April 2014 under certificate of urgency, the Applicants moved the Court in exercise of its revision powers under Sections 362 and 364 (1) (b) of the [Criminal Procedure Code](#) to call and examine the appropriateness and legality of the issued by the Court in Criminal Case No E 598 of 2023 in which the Court allowed the withdrawal of the proceedings therein.
2. It was contended that the interested party one DAve Walter Mburu was charged with the offence of forgery Contrary to Section 345 as read with Section 349 of the [Penal Code](#) and as at the time of withdrawal two witnesses had testified against him before Hon A. Okello when on 21st March 2024 the Court allowed the Respondent's application for withdrawal of the case under Section 87 of the [CPC](#).
3. It was contended that the said application for withdrawal was not in conformity with the provisions of Article 157(11) of the [Constitution](#) and that the said application was against the wishes of the complainants whose views and sentiments were not considered and that the application was allowed under the wrong and mistaken impression that the same was a family dispute and that the dispute



would have been addressed in the two Succession Causes, which amounted to condoning criminality on the part of the accused person and contrary to the evidence of PW2 on record.

Submission

4. It was submitted by the Applicants that the Court has jurisdiction under Article 165(6) and (7) as was stated in the case of *Anne Wanja v Republic* [2022] eKLR where the Court stated that the complainants should have been given reasons when the case was terminated, since the case involved them as victims. It was contended that the trial Court ought to have interrogated the reasons given by the DPP as to satisfy himself whether they answered to the threshold set by the *Constitution* and in particular Article 157(11) as was stated in the case of *R v SFabmi Salim said* [2013] eKLR.
5. On behalf of the Respondent it was submitted that the prosecution having looked at the evidence and the fact that there were two Succession Cases pending in Court decided under Article 157(11) to withdraw the case in the public interest noting that the accused was aged 74 years and that the issues raised in the charge could be addressed in the succession cases.

Determination

6. For record purposes, it must be stated that the issue before the Court is to examine the correctness, legality and appropriateness of the decision by the Magistrate to allow the application by the prosecution to withdraw the charges against the interested party and not the decision of the DPP to withdraw the same, which can only be challenged through judicial review. I must further point out that the Applicant did not join the accused person to the proceeding herein noting that the decision by the Court would affect his rights and interest.
7. The powers of this Court on revision is provided for under Section 362 of the Criminal Procedure Code to call for the record for purposes 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.
8. In *Joseph Nduvi Mbuvi v Republic* [2019] eKLR the Court stated that the revisionary jurisdiction should only be invoked where there are glaring acts or omission but should not be a substitute for an appeal and therefore the only question this Court ought to answer is whether the Court decision to allow the application for withdraw was incorrect or irregular.
9. Save for the fact that the Court did not hear the concerns of the victims while making the decision herein, there is no illegality and or inappropriateness with the decision herein as the Court considered the fact that there were in existence two Succession matters wherein the victim's concerns could be addressed.
10. The Court is only required to satisfy itself that the reasons given by the prosecution for the withdrawal of a suit are valid and that the action of the DPP is not exercised to defeat the cause of justice as provided for under Article 157(11) of the *Constitution*.
11. I therefore find no merit on the application herein which I hereby dismiss.

DATED SIGNED AND DELIVERED AT MURANGA THIS 9TH DAY OF OCTOBER 2024

J. WAKIAGA

JUDGE

In the presence of:



Mr. Mwangi for the State

Accused - Present

Jackline – Court Assistant

