



REPUBLIC OF KENYA



KENYA LAW
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**Muriungi v Republic (Criminal Revision E220 of 2024)
[2024] KEHC 12405 (KLR) (16 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12405 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL REVISION E220 OF 2024
HM NYAGA, J
OCTOBER 16, 2024**

BETWEEN

TONY MURIUNGI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This Revision file was opened pursuant to a letter from Hon D. Nyambu Chief Magistrate, Meru Law Courts.
2. In brief, Learned Magistrate states that one Tonny Muriungi is an accused in the following cases;
 - a. Criminal Case No. E136 of 2024 *Republic v Tonny Muriungi* where the Complainant is Newton Mutembei.
 - b. Criminal Case No. E139 of 2024 *Republic v Tonny Muriungi* where the Complainant is Frankline Muchui Bitu.
3. The Learned Magistrate further explains that on 10th July 2024 Criminal case No. E139 of 2024 was before the court and one Newton Mutembei sought to withdraw the said case. That unaware that the said Newton Mutembei was actually the complainant in Criminal case No. E136 of 2024, the Magistrate proceeded to have the case withdrawn under Section 204 *C.P.C.* That later, the mistake was realized hence the letter seeking revision.
4. Article 165(6) and (7) of the *Constitution* confers upon this Court supervisory jurisdiction over subordinate courts and empowers this Court to make any order to give any direction it considers



appropriate to ensure fair administration of justice. The said provisions are couched in the following terms:

- “(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
- (7) for the purpose of clause (6), the High Court may call for the record of any proceedings before any court or person, body of authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”

5. As regards the *Criminal Procedure Code*, the correct legal provision ought to have been section 362 of the *Criminal Procedure Code* provides 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. 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. In view of the above, it is patent that the powers of revision under section 362 of the *Criminal Procedure Code* are invoked to enable this Court satisfy 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 subordinate court.

8. Therefore, if the Subordinate Court’s decision is wanting in its correctness, legality or propriety or the proceedings are irregular, this Court will no doubt step in and correct the same.

9. In *Joseph Nduvi Mbuvi v Republic* [2019] eKLR G.V. Odunga J (as he then was) while interpreting the provisions of Section 362 of the *Criminal Procedure Code* opined as follows:-

“A strict reading of section 362 of the *Criminal Procedure Code*, however, does not expressly limit the High Court’s revisionary jurisdiction to final adjudication of the proceedings. The section talks of “any criminal proceedings”. “Any criminal proceedings” in my view includes interlocutory proceedings. Suppose a subordinate court would be minded to make an absurd decision of commencing a criminal trial by directing the accused to give evidence before the prosecution, I do not see why the High Court cannot call the proceedings in question to satisfy itself as to the correctness, regularity or legality of such order. In my considered view, the object of the revisional jurisdiction of the High Court is to enable the High Court, in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court’s revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed,



necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well.”

10. The Letter from the chief magistrate is self-explanatory. The orders were made in wrong file and the court, the accused and even the complainant thought it was the correct file.
11. Having perused the Letter, I am satisfied that sufficient grounds have been laid to revise the order of the court issued on 10th July 2024.
12. Consequently, in exercise of the Powers of this court under Article 165 (6) and (7) of the Constitution and Section 362 and 364 of the CPC that orders of 10th July 2024 are set aside.
13. The parties are directed to appear before the Chief Magistrate Meru Law Courts, on a day to be assigned by the court for further directions in this case.
14. The parties are at liberty to apply for withdrawal of the case in the correct file between them.

DATED, SIGNED AND DELIVERED AT MERU THIS 16TH DAY OF OCTOBER 2024.

H.M. NYAGA

JUDGE

In the presence of:

C/A: Kinoti

