



**Ndinguri v Republic; Ndinguri (Interested Party) (Criminal Revision Application E019 of 2023) [2024] KEHC 11760 (KLR) (4 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11760 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL REVISION APPLICATION E019 OF 2023**

**A MSHILA, J**

**OCTOBER 4, 2024**

**BETWEEN**

**ANN WAMBUI NDINGURI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**AND**

**LUCY WANJIRU NDINGURI ..... INTERESTED PARTY**

*(An application seeking revision of the entire file in  
Githunguri Magistrate Court Criminal Case No.1394 of 2023)*

**RULING**

1. The application was brought under the provisions of Sections 362 as read with Sections 364 of the [Criminal Procedure Code](#); The Applicant seeks for the following orders;
  - i. Spent
  - ii. This Hon. Court be pleased to admit this application for hearing ex-parte in the first instance prior to the hearing of the prosecution case scheduled for 28/02/2024 in the Magistrates Court at Githunguri in Criminal Case No E1394 of 2023; R v Ann Wambui Ndinguri.
  - iii. This Hon. Court be pleased to issue an order calling for the entire file in Githunguri Criminal Case No E1394 of 2023 R v Ann Wambui Ndinguri for examination as to its legality, propriety and as to the regularity of the proceedings in the said matter.
  - iv. This Hon. Court be pleased to stay the proceedings before the subordinate court at Githunguri in Criminal Case No E1394 of 2023 R v Ann Wambui Ndinguri pending the hearing and determination of the application filed herein.



- v. This Hon.Court be pleased to quash and/or declare that the proceedings before the subordinate court at Githunguri in Criminal Case No E1394 of 2023 R v Ann Wambui Ndinguri are irregular null and void.
  - vi. This Hon. Court be pleased to issue an Order discharging and or acquitting the Applicant forthwith from the proceedings and charges preferred against her in the subordinate court at Githunguri in Criminal Case No E1394 of 2023; R v Ann Wambui Ndinguri.
  - vii. This Hon. Court be pleased to issue such other orders as it may deem fit to grant.
2. The parties canvassed the application by filing and exchanging written submissions.

### **Applicants Submissions.**

3. The applicant herein was charged with six (6) counts of forgery of an official document; she was also charged with uttering a false document with intent to defraud in relation to the two documents; The Applicant avers that the two documents had been verified by government officials who acknowledged verified and confirmed that the two (2) said documents were true records of those held by the Government which was raised and brought to the attention of the trial court; but despite this the trial court was still keen on having the matter proceed for trial; and that such action will unjustifiably prejudice the applicant.
4. The applicant avers that there is a clear indication that the complainant who is a co-wife was intent on using the proceedings of the intended criminal hearing as a means of depriving her of her interests in the Estate of her deceased husband.
5. The applicant prays for an order discharging her from the irregular proceedings.

### **Respondents Submissions**

#### **Issues For Determination**

6. Having read the application, the grounds of opposition and the written submissions this court has framed only one issue for determination; which is whether to grant the applicant the orders as sought.

#### **Anaylsis**

7. The High Court stems its supervisory jurisdiction from the Constitution of Kenya Article 165(6) (7) which provides that:
  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 purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or 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.”
8. The High Court also obtains its revisionary jurisdiction from the statute under Section 362- 364 of the Criminal Procedure Code. The court in exercising its discretion based on the above provisions is required to pay attention to individual circumstances of each case.
9. This court called for the entire lower court record in Githunguri Criminal Case No E1394 of 2023 R v Ann Wambui Ndinguri for purposes of interrogation and examination as to the legality, propriety and the regularity of the proceedings in the said matter.



10. The first issue for examination being the Charge Sheet; it is noted that the offences of Forgery and Uttering for which the applicant was charged with are indeed offences known to law and do in fact exist under Sections 351, 353 and 348 of the *Penal Code*;
11. The second interrogation is the manner in which the plea was taken; the record reflects that the substance of each Charge was read out to the applicant in the language she understood which is indicated as Kiswahili and her response was ‘Si Kweli’ which was duly recorded in the applicants own words; as her response was an indication that she did not admit any of the charges, the trial court then proceeded to enter a plea of ‘NOT GUILTY’ for each count separately;
12. From examination of these proceedings this court is satisfied that the applicant understood the charges and is satisfied that there was no irregularity in the manner in which the plea was taken.
13. After the plea was taken the applicant had a right to be released on bond or bail pending the trial; Her application for bail did not attract contestation by the prosecution and the trial court in exercising its discretionary power granted a bond of Kshs 50,000/- with one surety or in the alternative a cash bail of Kshs 30,000/- with one contact person; this court is satisfied that there was no impropriety in the manner the discretion was exercised and the terms for admission to bond/bail were very reasonable.
14. The actual bone of contention relates to the documents the applicant is alleged to have forged; counsel for the applicant submitted that all the documents were all obtained procedurally and a Government verification had been filed by the Registrar of Persons at Githunguri; Counsel further submitted that the charges as framed were in contravention of the constitutional rights of the applicants own child; namely one Julia Muthoni (a Minor) rights to her name;
15. In its Ruling the trial court ruled that based on the documents that were the subject of the proceedings the applicant was at liberty to make a proper application that was in the best interest of the minor; which documents constituted the minors Birth Certificates;
16. It is this courts considered view that the authenticity of the documents in question can only be weighed, tested and determined by the trial court through a full trial process; on the issue of whether the child’s constitutional rights had been contravened or violated such orders as sought can only be granted by the filing of a proper application or a substantive Petition in court; this court is satisfied with the trial courts finding and finds no good reason to warrant interference.
17. In light of the above this court finds that no irregularities, illegalities or impropriety have been demonstrated in the conduct of the proceedings by the trial court so as to warrant the granting of the revisionary orders as sought under the sections which this application was brought;
18. For those reasons this court finds that the applicant has not met the threshold for the grant of the prayers for revision; the application is found to be devoid of merit it is hereby dismissed.
19. Lower court file be remitted back to Githunguri Law Courts. Case closed.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 4<sup>TH</sup> DAY OF OCTOBER, 2024**

**A. MSHILA**

**JUDGE**

In the presence of



Mourice – Court Assistant

Lerionka h/b for Adrian Kamotho for the Applicants

N/A by Gacharia – for the Respondent

Applicant present

Kinyanjui for the Intended Party

