



**Oduor v Republic (Miscellaneous Criminal Application
E044 of 2022) [2023] KEHC 769 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 769 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E044 OF 2022**

**A. ONG'INJO, J
FEBRUARY 9, 2023**

BETWEEN

JULIUS ODHIAMBO ODUOR APPLICANT

AND

REPUBLIC RESPONDENT

(revision in Mombasa Chief Magistrates Court Criminal Case No. E2264 of 2021)

RULING

1. Vide a Notice of Motion application filed on March 24, 2022, the applicant seeks for orders of revision in Mombasa Chief Magistrates Court Criminal Case no E2264 of 2021 pursuant to section 362 and 364 of the *Criminal Procedure Code*.
2. The application is premised on the supporting affidavit of the applicant in which he avers that the current criminal trial against him arises out of a civil suit in which he was awarded damages and is meant to deny him the fruits of his judgment.
3. The applicant also sought that the court adjusts the bond terms that were granted to him in the subordinate court which he was unable to raise.
4. Section 362 and 364 (1)(b) of the Criminal Procedure Code. Section 362 provides: -

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.
5. Section 364 (1)(b) of the Criminal Procedure Code provides: -



1. In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may: -
 - (b) in the case of any other order other than an order of acquittal, alter or reverse the order.
6. In respect to the above provisions, Nyakundi, J in *Republic v James Kiarie Mutungei* [2017] eKLR held: -

“The rationale of the High Court as a revisionary authority can be initiated by an aggrieved party, or *suo-moto* made by the court itself, call for the record relating to the order passed or proceedings in order to satisfy itself as to the legality, or propriety, correctness of the order in question. The scope of revision therefore is more restrictive in comparison with the appellate jurisdiction which requires the high court to rehear the case and evaluate the evidence in totality by the lower court to come with a decision on the merits. The provisions of section 362 and 364 of the code do not provide for a time limit which a party may seek the court to invoke its jurisdiction under the powers of revision and grant the relief sought. The power of revision conferred by the provisions of section 362 as read with section 364 was left open for an applicant or any aggrieved party to be considered and taken before the final order in reference to the ongoing proceedings.”

...

“It is to be appreciated that the ambit created by the provisions of section 362 of the code empowers this court to exercise discretion as to the correctness, legality and propriety of the order or proceedings. There is no dispute that the trial court which held the sessions complained of by the applicant is inferior to this court as outlined in our Constitution of the Republic. The subordinate court is therefore a subject of supervisory and superintendent by this court in both judicial and administrative function. The court can therefore annul, review, vary or issue further directions on the matter complained of by an aggrieved party or which came into the attention of the court suo-moto. The only rider in the circumstances of this jurisdiction is to ensure the accused has an opportunity to be heard or his legal counsel before any decision is reached.”
7. This court finds that the applicant is seeking the intervention of this court in an on-going criminal case in the subordinate court. This court has perused the copy of charge sheet attached to the applicant’s application, the submissions and the orders made in the subordinate court and has not established any impropriety, illegality, irregularity or incorrect finding, sentence or order for which an order for revision is called for. The province of investigations and prosecution is a mandate that is solely provided in the *Constitution* to be carried out by the Office of the inspector general of police and the director of public prosecution and the court cannot interfere with it unless it is shown that there is breach or violation of provisions of the law and the *Constitution*.
8. The applicant is facing trial where he is alleged to have committed perjury in three counts and the substance of those allegations against him can only be canvassed in the trial court where he will have an opportunity to cross examine his accusers before the court can arrive at a verdict as to whether or not he is guilty.
9. In conclusion, this court finds that the application for revision lacks merit and is therefore dismissed. Orders accordingly.



**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS THIS
9TH DAY OF FEBRUARY 2023**

HON LADY JUSTICE A ONG'INJO

JUDGE

In the presence of: -

Ogwel- Court assistant

Mr Ngiri for the respondent

Applicant present in person

HON LADY JUSTICE A ONG'INJO

JUDGE

