**Waweru v Republic (Criminal Revision E136 of 2022)**
**[2023] KEHC 2473 (KLR) (8 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 2473 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KIAMBU**

**CRIMINAL REVISION E136 OF 2022**

**JM CHIGITI, J**

**FEBRUARY 8, 2023**

**BETWEEN**

**BENSON KURIA WAWERU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

***(Being an application against the RULING of the Chief Magistrates Court Magistrate's Court at Thika delivered on 16th December, 2021 in Thika CMCR No. 8158 of 2016)***

**RULING**

1. What is before this court is the application dated February 10, 2022 wherein the applicant seeks the following orders:

   A. Spent.

   B. That this honorable court be pleased to issue a stay of proceedings of the Thika Chief Magistrate's Court in Criminal Case No. 8158 of 2016 being Republic v. Benson Kariuki Waweru pending the hearing and determination of the application.

   C. That this honorable court do call for and examine the record of the Thika Chief Magistrate's Court in Criminal Case no. 8158 of 2016: Republic v. Benson Kairuki Waweru.

   D. That this honorable court do set aside the orders of the Thika Chief Magistrate's court in Criminal Case no. 8158 of 2016. Republic v. Benson Kariuki Waweru closing the prosecution case and giving a ruling on whether the accused person has a case to answer and reopen the case to recall the witnesses.

2. The same is supported by his affidavit.

3. The applicant calls upon this court to call for the trial court file with a view to relooking at the legality, propriety and of the ruling issued by the trial court putting the accused person to his defense in exercise its discretionary power of revision under section 362 and 364 of the *CPC*.

4. When the application came up for hearing, MS Ngesa for the Republic opposed the application orally. The applicant had no issues with this.

**Analysis and Determination**

The High Court has supervisory powers over the subordinate courts and Tribunals. This power is donated by section 362 of the *Criminal Procedure Code* which 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".

Section 367 *Criminal Procedure Code* provides:-

> " 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 of 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".

5. According to the trial court file, the accused is charged with the offence of robbery with violence contrary to section 296(2) of the *Penal Code* which is a capital offence that attracts a death sentence.

6. Upon reviewing the trial court file I also noted that the Applicant was unrepresented when the prosecution witness testified. This has weighed heavily in the mind of the court.

7. Article 50 of *the Constitution* guarantees the Applicant the right to fair hearing which he is seeking to enjoy through the opportunity to cross examine the prosecution witnesses.

8. The court has a duty to fulfil and promote the national values and principles of governance as guaranteed under Article 10 of *the Constitution* and in particular the rule of law and human rights in upholding the Applicant a fair and just trial.

9. The applicant has come to the alter of justice seeking to be heard. The court must on its part not shut its doors on the Applicant unless there are sound reasons.

10. Failure to allow the applicant the right to cross examine the prosecution witnesses will occasion a lot of injustice to the applicant without any justification.

11. Every accused person has a right to fair administrative action as guaranteed under article 47 of our constitution which stipulate as follows:

    1. Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

12. The Applicants' rights under article 47 of *the Constitution* are available to him before the plea, at the plea stage, during cross examination, mitigation and indeed as late at the sentencing phase.

13. This is in keeping with the right to access to justice under article 48 of *the constitution*.

14. In any event, should the witnesses be cross examined by the applicant, the prosecution can re-examine the witness if it so wishes.

15. The interests of justice shall be promoted if the application is granted. In the contrary, the right to fair hearing will be threatened, infringed and or violated if the application is not allowed.

16. In any event the right to fair hearing is non derogable in nature and the Republic cannot take the right away arbitrarily.

17. Denying the applicant, the right to cross examine the prosecution witnesses will be tantamount to offending the rules of natural justice which provides that no one will be condemned unheard.

18. I have a duty to fulfil, protect and promote the bill of rights under article 259 of *The Constitution* which provides that:

    (1) This Constitution shall be interpreted in a manner that:

    (a) promotes its purposes, values and principles;

    (b) advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights.

19. I invoke the powers in ensuring that the Applicant has their day in court.

**Disposition:**

1. I do hereby grant the application and set aside the ruling dated December 16, 2021, in Thika Chief Magistrates court in Criminal Case no. 8158 of 2016 being Republic vs. the applicant herein.

2. The Prosecution witnesses shall be recalled for purposes of cross examination by the applicant on a date to be assigned by the trial court.

**DATED AND DELIVERED AT KIAMBU THIS 8TH DAY OF FEBRUARY, 2023.**

**J. CHIGITI (SC)**

**JUDGE**

**In the Presence of:**

For Applicant:

For Respondent:

C/A:

**RULING** delivered virtually.