



**Ochieng v Republic (Criminal Revision Application E309 of 2023)
[2023] KEHC 17395 (KLR) (Crim) (15 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17395 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION APPLICATION E309 OF 2023**

DR KAVEDZA, J

MAY 15, 2023

BETWEEN

ROBERT ADEWA OCHIENG APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant vide the Notice of Motion application dated May 10, 2023, a certificate of urgency of even date and the supporting affidavit of Robert Adewa Ochieng has filed an application for revision and sought orders that:
 1. The Honourable Court be pleased to stay the proceedings in Chief Magistrate Court at Nairobi Criminal Case No 1812/2016 pending hearing and determination of this application.
 2. That the Honourable Court be pleased to call for and examine the records/ proceedings in Nairobi Criminal Case No 1812/2016.
 3. That the court be pleased to review and or set aside the ruling and orders of the Subordinate Court (Hon Ochoi of March 30, 2023) wherein the court unreasonably forced the applicant to conduct his defence.
2. I have carefully gone through the said application and note that the application seeks to challenge the discretion of the trial magistrate. It is trite law that this court is vested with supervisory jurisdiction over subordinate courts under Article 165(6) of the *Constitution*. The *Criminal Procedure Code* under section 362 and 364 grants the High Court powers to call 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.

3. The court, in exercise of its discretion, is only mandated to interfere with the Magistrate's discretion if the Magistrate has exercised the discretion whimsically or capriciously, disregarded the law or the procedure, or gone on a fishing expedition and relied on irrelevant factors. This court cannot therefore purport to interfere with the discretion of a Magistrate if the same has been exercised judiciously.
4. In this case, the trial Magistrate declined to adjourn the matter and ordered the applicant to tender his evidence. The issue as to whether to allow or deny an adjournment is a matter within the discretion of the court. I also note that the case has been pending for about seven (7) years since the year 2016.
5. I would be reluctant to grant the orders sought on the basis that if the applicant is dissatisfied with the decision of the trial magistrate, and in the event that he is convicted, he still has a chance to raise the same issue as a ground of appeal. For the foregoing reasons I do not find any merit in the application and decline to grant the orders sought.

RULING, READ AND DELIVERED ON 15TH DAY OF MAY, 2023

D KAVEDZA

JUDGE

