



**Langat v Republic (Criminal Revision E379 of 2022)
[2023] KEHC 19052 (KLR) (21 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19052 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL REVISION E379 OF 2022
HK CHEMITEI, J
JUNE 21, 2023**

BETWEEN

JOHANA KIPNGENO LANGAT APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein was charged with the offence of hate speech contrary to section 13(1) (a) as read with section 13(2) of the [National Cohesion and Integration Act](#) No 12 of 2008.
2. The matter did proceed at the trial court where two witnesses were heard in the presence of the counsel for the applicant. The third witness however was heard in the absence of the said counsel for the reason that he was indisposed. The court however proceeded to hear the witness in his absence after the counsel who had been sent to hold his brief excused himself since his instructions were only limited to seeking adjournment.
3. When the matter was scheduled for hearing a day thereafter counsel for the applicant Mr Bosek was present and told the court that he was still under medication and he had been advised by the doctor not to sit for a long time and had been given seven days to rest. He had however availed himself in court for the court had insisted that he ought to have attended and cross examined the witness.
4. The court relented and granted another adjournment until 1st and 2nd August. This prompted the applicant to apply for a review of the said orders.
5. The court directed the parties to file written submissions which they have done. The only complain by the respondent is that the applicant did not attach the proceedings from the trial court for this court to make informed decision.



6. The court has perused the trial courts proceedings though handwritten but legible enough. There is no doubt that the applicants counsel was indeed unwell and had been granted a 7 days' rest. The suggestion that the trial court recuse itself in the event that it was going to handle election petition was made in my view in contemplation of the fact that the court seemed to have been under strict guidance to conclude the matter.
7. Taking the totality of the issues hearing and the proceedings at the trial court, is this a matter that warrants the interference by this court.?. Article 165 of the Constitution establishes this court and confers it the relevant jurisdiction which includes consideration of the issues raised by the applicant herein.
8. Section 362 of the Criminal Procedure Code which grants this court the jurisdiction to supervise the subordinates' courts provides that;

“Power of High Court to call for records

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.”

9. Further Section 364(1) (b) and (2) states that;

“Powers of High Court on revision

- (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.
- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.”

10. The sum total of the above portions of the law indicates that this court shall interfere when there are irregularities or illegalities noted in the proceedings whether ongoing or the matter has been concluded. The purpose of this is to ensure that there is fair trial and strict compliance with the law. This is applicable where the court exercised its jurisdiction and powers arbitrarily and unfairly contrary to the tenets provided under article 50(1) of our Constitution.
11. The intention of the supervisory jurisdiction of this court is not to take away the powers of the trial court but simply a mechanism to ensure that it complies with the procedural laws and does not exercise its discretion arbitrarily or with bias.
12. Looking at the matter at hand this court is satisfied that the same proceeded well until witness number three. The court having been informed that the defence counsel was unwell and even shown the



treatment documents did well to adjourn the matter. However, when the defence counsel appeared on 29.7.22 the court ought to have granted him more time to recuperate and prepare for the trial.

13. Further adjourning the matter to 1st and August 2, 2022 was still reasonable but too short for the defence counsel to have healed well noting that he was within the 7 days of recuperation given by the doctor. That period was too soon and too short.
14. The other reason of recusal i think the court explained itself well. Obviously it is common knowledge that the court was under strict instructions to conclude the political matters, an issue which in my view ran contrary to the principles of fair hearing and undue influence to the court. It burdened the court as well as the parties to say the least.
15. In the premises, and for the reasons given above i find that there is no reason for this court not to conclude the matter. There is no evidence of bias that one can deduce from the proceedings.
16. The court in exercising its jurisdiction therefore directs that the matter does proceed in the same court and pw3 be recalled and his evidence be taken denovo to allow the defence counsel appropriately deal with his evidence.
17. The proceedings of July 27, 2022 in respect to the evidence by PW3 Wycliffe Mwatu are hereby set aside.
18. Costs in the cause.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 21ST DAY OF JUNE 2023.

H. K. CHEMITEI

JUDGE

