



**Namunyu v Republic (Miscellaneous Criminal Application E178 of 2022)  
[2023] KEHC 18972 (KLR) (Crim) (19 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18972 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
MISCELLANEOUS CRIMINAL APPLICATION E178 OF 2022  
DR KAVEDZA, J  
JUNE 19, 2023**

**BETWEEN**

**SCOLA IMBITI NAMUNYU ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for revision against the ruling delivered by Hon. L. Onyina, CM on 8th June 2022 in Jomo Kenyatta Chief Magistrate's Court Criminal Case no. 85 of 2019 Republic vs Scola Imbiti Namanyu)*

**RULING**

1. Vide an undated notice of motion the applicant sought orders to review and/or set aside the trial magistrate orders made on June 8, 2022, closing the prosecution's case. She also sought to have the trial heard before another court of competent jurisdiction. The application was grounded by averments on the face thereof and supported by an affidavit dated June 16, 2022 sworn by the applicant.
2. The averments made in support of the application were that: the applicant is an accused before the Jomo Kenyatta Chief Magistrate Court criminal case no 85 of 2019. The prosecution amended the charge sheet during the evidence of the 7<sup>th</sup> witness. The applicant sought to have a witness recalled and the matter was scheduled for hearing on June 8, 2022. The applicant's advocate sought an adjournment. However, the trial court declined the adjournment and the prosecution closed its case. A ruling date on whether the applicant had a case to answer was set for June 23, 2022.
3. The applicant is apprehensive that she will not get a fair trial. She maintains that the trial magistrate exhibited bias in favour of the prosecution, especially in admitting inadmissible evidence. In addition, in declining the adjournment, the trial court left the impression that there was no fairness. She applied



for proceedings, but to date, she has been unable to get them and thus cannot file an appeal to the ruling. She urged the court to grant the orders sought.

4. In response, the respondent filed grounds of opposition dated April 28, 2022. The grounds raised were that the applicant has not demonstrated that the respondent is in breach of her fundamental rights. The applicant has not demonstrated any special or unusual circumstances to warrant the grant of the prayers sought. The applicant has not demonstrated the existence of an error on the correctness, legality, or propriety of the orders made by the trial court. The orders sought are discretionary and the applicant has failed to demonstrate that they are deserving of the court's discretion.

#### **Applicant's Written Submissions.**

5. Mr Oundu, learned counsel for the applicant submitted that the trial court action to close the prosecution's case itself violated the applicant/accused's constitutional right to challenge evidence guaranteed under Article 50 (2) (k) of the [Constitution of Kenya](#). He argued that it was not the prosecution who closed their case, but the trial court. He maintained that the court is under a high moral obligation to keep the machinery of justice equity and good conscience alive.

#### **Respondent's Written Submissions.**

6. In rebuttal, Ms Edna Ntabo, learned prosecution counsel submitted that the trial learned magistrate correctly applied her mind to the facts and the law and arrived at a proper finding. She exercised her discretion judiciously. Therefore, there is nothing improper or incorrect in the ruling to warrant a revision. Prosecution counsel relied on the case of [Walter Osapiri Barasa vs Cabinet Secretary Ministry of Interior & National Co-ordination & 6 others](#) [2019] ECLR in support of her position.

#### **Issues for determination.**

7. Having considered the application, the response, the submissions of the parties, and the applicable law, the issue for Determination is whether the applicants should be granted the revisionary orders sought.

#### **Analysis and Determination.**

8. The power of this court in its revisionary jurisdiction is founded under Section 362 of the [Criminal Procedure Code](#) (Cap 75) Laws of Kenya which provides that:

"The High Court may call for and examine the record of any criminal proceedings before any subordinate court to satisfy 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. Article 165(6) of the [Constitution](#) provides that:

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.

10. On the merits of the application, the applicants seek a review of orders of the trial court issued on June 8, 2022 setting the matter for ruling on a case to answer. In her pleadings, the applicant alleges that the trial court refused to grant her an adjournment in order to cross-examine a prosecution witness at a later date. Secondly, the court on its own motion closed the prosecution case. In addition, she lamented that the court was biased throughout the trial process and she is apprehensive about whether justice is being served.



11. The High Court has no jurisdiction to micro-manage a trial. If anything, the policy of the law should be to permit a trial to proceed without interruption or interference from any quarter. In *Joseph Nduvi Mbuvi v Republic* [2019] eKLR which related to an application for revision of an order made by the trial court in the course of a trial, Odunga J took the view that interlocutory appeals and revisions are not limited by the *Criminal Procedure Code* to the final adjudication of a matter. With respect applications for revisions provided for under section 364 of the *Criminal Procedure Code*, he stated that:
  - “ 13. From the foregoing it is clear that the High Court cannot exercise revisionary jurisdiction in an order of acquittal. It may however exercise the said jurisdiction in case of a conviction or in any other order.
  14. It is, however my view that the jurisdiction should not be invoked so as to micro-manage the Lower Courts in the conduct and management of their proceedings for the simple reason that if every ruling of the Lower Court and which went against a party were to be subjected to the revisionary jurisdiction of the Court, floodgates would be opened and the Court would be inundated with such applications thus making it practically impossible for the Lower Courts to proceed with any case to its logical conclusion.”
12. In *Bryan Yongo vs Republic*, Criminal Revision No 147 of 2007, Ojwang J (as he then was) emphasized the importance of continuity of the trial process in any ongoing case. He said;
  - “Continuity of the trial process may not be unnecessarily interrupted by applications to the High Court alleging defective procedure, in respect to directions which will, in any event, culminate in the merits of the judgment itself.”
13. What emerges from the above decisions, is that the High Court should very sparingly entertain interlocutory appeals and applications for revision. The exercise of such powers should be confined to checking the ‘correctness, legality or propriety’ of findings or orders of the lower court, and only in circumstances where to fail to do so would lead to a derogation of the constitutional protection accorded an accused person under Article 50(2) of the *Constitution*.
14. I have perused the record of the lower court. On May 5, 2022, the prosecution closed its case. However, counsel for the accused made an application to reopen the case to recall a witness. The orders sought were granted and the matter was scheduled for cross-examination of the document examiner on May 12, 2022. On the said date, the matter did not proceed and was scheduled for further hearing on June 8, 2022.
15. On June 8, 2022, counsel for the accused was not ready to proceed with his cross-examination of the witness. He sought an adjournment on the ground that he had filed Petition No E277 of 2022 in the High Court. the application for adjournment was opposed. The trial court made a determination that there was no order of the high court to stay the proceedings. further, the witness was present in court and should be cross-examined. The application was therefore dismissed. The prosecution’s case was therefore marked as closed and parties were directed to file their submissions on whether the accused had a case to answer.
16. In my view, I am not satisfied that there is any illegality or impropriety demonstrated by the decision of the trial court to warrant orders of revision. The trial court, in my view, properly exercised its discretion in rendering a ruling on whether the applicant/accused should be granted an adjournment or not. It would amount to micro management of the trial court if the High Court, in exercise of its powers



of revision, were to venture into the arena and begin to inquire whether or not the trial court should decide when matter should be heard and how.

17. To my mind, that would amount to serious micro-management of the trial process, would take away the discretion of the trial court in the conduct of trials before it, and would thereby greatly hamper the conduct of a trial.
18. Further, whether a court relied on inadmissible evidence in reaching its decision, in my view, this is an issue that can be well articulated by the High Court in exercise of its appellate jurisdiction. The question of admissibility of evidence, or the decision to deny an adjournment in a trial court cannot therefore be a proper subject of revision.
19. In the circumstances, the notice of motion seeking revision is denied. The lower court's file is returned herewith.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 19<sup>TH</sup> DAY OF JUNE 2023.**

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**D. KAVEDZA**

**JUDGE**

**In the presence of:**

