



**Kibet v Republic (Criminal Revision E033 of 2024)  
[2024] KEHC 14489 (KLR) (13 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14489 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL REVISION E033 OF 2024  
RB NGETICH, J  
NOVEMBER 13, 2024**

**BETWEEN**

**AMBROSE KIBET ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant has moved this court vide an application dated 29<sup>th</sup> April, 2024 brought under the provisions of Article 25(c), 47, 50(1), 157(6)(a)(b) And (c) and 159(2) (a) of *the Constitution* of Kenya 2010 Section 4 of the *Fair Administrative Action Act* of 2015, Section 87(a), 362 and 364(1)(b) of the Criminal Procedure Code an application for orders:
  - i. Spent.
  - ii. That this Honorable Court be pleased to call for and examine the record of the Honourable Senior Principal Magistrate in Marigat Crim Case No. E300 of 2023 for the purpose of certifying itself as to the correctness, legality and propriety of the orders of the court issued on 15<sup>th</sup> April, 2024.
  - iii. That the Honourable Court be pleased to review, revise and set aside the order of withdrawal and vary the same with a view to reinstating the above stated case which was withdrawn by the prosecution on 15<sup>th</sup> April 2024 at Marigat Mobile Court.
  - iv. Any other order(s) this court may deem fit to grant.
2. The application is based on the following grounds:
  - i. The applicant herein was the complainant in the lower court in Marigat Criminal Case No. E300 of 2023 R = Vs= Vincent Chebii and the case was set for hearing on 15<sup>th</sup> April, 2024 in Marigat mobile court but the prosecution withdrew it prematurely.



- ii. That the then accused in the case hitherto was charged with the offences of threatening to kill and malicious damage to property contrary to Section 223 and 339(1) respectively of the penal code.
  - iii. The prosecutor gave reasons for the withdrawal that, she had received instructions from her superiors to withdraw it since it is a civil matter of which, the applicant herein disagrees with that position and especially for the offence of threatening to kill which borders on a threat to life.
  - iv. The prosecutor withdrew the case on 15<sup>th</sup> April, 2024 under section 87 (a) of the Criminal Procedure code without informing the complainant nor his counsel on record who were present outside the court house.
  - v. That the prosecution did not inform the applicant (complainant) or his counsel, who was watching brief on his behalf, of the reasons as to why they preferred to withdraw the criminal case.
  - vi. That the applicant has been greatly prejudiced as a result of the withdrawal of the case herein above and feels that he has been denied justice.
  - vii. That the offence of threatening to kill is not a civil matter and the applicant disagrees with the prosecution's assertion.
  - viii. That the threat to be killed by the then accused now looms over the applicant's mind making him feel hopeless and without any recourse for justice and in the circumstances, it is only fair and just that the order of withdrawal of the criminal case be reviewed, revised, set aside and the case be reinstated.
3. The application is supported by affidavit dated 29<sup>th</sup> April, 2024 where the applicant restates the grounds for revision. He avers that the case before the trial court was set for hearing on 15<sup>th</sup> April, 2024 at Marigat mobile court and he was ready with his three (3) witnesses namely; Arnold Boror, Peter Chebon and Investigating Officer (Pc) Mukabana and they were seated outside the court only to learn that the prosecution counsel had withdrawn the suit without informing him nor his counsel Mr. Mwaita.
  4. He avers that on 8<sup>th</sup> April 2024, his counsel wrote to the Prosecution requesting that they should reinstate the case and followed up later with another letter dated 22<sup>nd</sup> April 2024 wherein the Prosecution replied on the same and attached a copy of the letter from their Head Office dated 8<sup>th</sup> April 2024.
  5. That he has read the copy of the letter dated 8<sup>th</sup> April, 2024 from the prosecution headquarters and notes that;
    - i. It did not address his main complaint of threatening to kill and also ignored the proof of ownership of land documents which are with the investigating officer.
    - ii. Thirdly, even after receiving the letter on 11<sup>th</sup> April, 2024, the prosecutor in Kabarnet Office did not deem it fit to inform him, the investigating officer nor his counsel on record about the directive to withdraw the case and with due respect, the prosecutor was not fair to him at all considering that he is the complainant.
  6. That after noticing that unfairness has been occasioned to him as stated above, he instructed his counsel to prepare this application. Further, threatening to kill is a crime falling under a criminal case and has



- no connection with a civil case or it is not of a civil nature. Consequently, the prosecution made an error of judgment in withdrawing his said case.
7. He deposes that he is greatly prejudiced by the decision to withdraw the criminal case since his life is still exposed to danger by the acts of the then accused person and he is exposed to a state of hopelessness since he feels that the prosecution has denied him justice and it is his wish and prayer that he be given an opportunity to present his case in court, give the then accused an opportunity to ask him questions and for the trial court to make a decision on merit.
  8. He urges this court to call for, examine the record of the Honourable Senior Principal Magistrate in Marigat Criminal Case No. E300 of 2023 for the purpose of certifying itself as to the correctness, legality and propriety of the orders of the court issued on 15<sup>th</sup> April, 2024.

## Response

9. The prosecution counsel Ms. Vivian Ratemo filed replying affidavit in response to the application. She avers that the office of the director of public prosecutions is mandated by *the constitution* of Kenya, 2010 article 157 {6} (a) to institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed.
10. That article 157 6(b) provides that subject to clause (7) and (8), the Director of public prosecution has powers to discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions under paragraph (b).
11. Further that article 157 (10) provides that the Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority."
12. Further, Article 157 (11) further provides that in exercising the powers conferred by this Article, the Director of Public Prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process."
13. And by virtue of the said provisions, the respondent did institute criminal proceedings against one Vincent Chebii vide Marigat Criminal Case no E300 OF 2023, where the accused was charged with 2 counts, that is, threatening to kill contrary to section 223 of the penal code and Malicious damage to property contrary to section 339 (1) of the penal code.
14. She avers that the prosecution upon perusal of the facts of the case and review of the evidence collected by investigators thought it wise to have the matter withdrawn. That the decision was made to avoid an abuse of the court process where parties use the criminal justice system to settle personal scores or make a determination over ownership of land which is a purely civil issue.
15. She avers that The Office of the Director of Public Prosecutions is an independent constitutional office and is only subject to the control of the court in appropriate instances where illegality, irrationality and procedural impropriety has been demonstrated and by virtue of the a foregoing the applicant has not shown that the decision by the prosecution to discontinue proceedings has met any of the above instances to warrant the court to interfere in the respondent's mandate to institute and undertake and/ or discontinue criminal proceedings at any stage before judgment.
16. That it is trite that in execution of the mandate of the office of public prosecutions as provided by *the constitution* of Kenya 2010, the ODPP shall not be influenced by any person or authority and the contention by the applicant that the Prosecution required his consent prior to making the decision to



discontinue proceedings is completely misplaced. That the decision not to prosecute was made in good faith to avoid an abuse of the court process.

17. That it is of fundamental importance to note that the case was withdrawn under section 87 (a) of the criminal procedure code which means the respondent has power to recharge the accused person. However, if the circumstances which led to the withdrawal of the case remain the same, the accused will remain discharged of the offence until such a time there is prima facie evidence incriminating him of the offence.
18. That it is also imperative to state that on the date the prosecution made the application for withdrawal, the counsel watching brief for the victims was not present despite the matter having been scheduled for hearing and counsel for the victims was duly informed of the reasons for withdrawal of the case as deponed to in their supporting affidavit.
19. Further, the applicant's contention that his life is still in danger based on new threats has not been substantiated since no report has been made of the same. That the primary issue is a claim for land and criminal proceedings cannot be used to adjudicate and the applicant can file a land case before the land and environment court where he can obtain orders for injunction should the court find merit in his application.
20. In conclusion, the prosecution counsel aver that the powers of prosecution counsel are delegated and therefore a prosecution counsel cannot act contrary to directions issued as per the letter dated 8<sup>th</sup> April, 2024.
21. The Applicant filed written submissions dated 17<sup>th</sup> September, 2014 whereas the Respondent opted to rely on their replying affidavit.

### **Applicant's Submissions**

22. The Applicants in their submissions identifies the following as issues for determination: -
  - i. Whether this Court should exercise its revisionary powers and revise or set aside the orders granted by the Honourable Magistrate on 15<sup>th</sup> April 2024 at Marigat Mobile Court.
  - ii. Whether this Court should exercise its Revisionary powers and revise or Set aside Orders granted by the Honourable Magistrate on 15<sup>th</sup> April 2024 at Marigat Mobile Court.
22. The Applicant submits that *the Constitution* of Kenya under Article 165(6) and (7) has granted Revisionary jurisdiction to the High Court and Secondly, Section 362 of the Criminal Procedure Code provides that the High Court has power to call for records 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.
23. That the offence of the then accused person against the Applicant was that of threatening to kill which is a serious offence that borders deprivation of the right of life and since the matter was withdrawn, the Applicant is living in fear for his life. That consequently, by withdrawing the matter, the Applicant's recourse to justice has been defeated. That after this matter was withdrawn, the then person (Vincent Chebii) went ahead and trespassed into the applicant's land which shows total disregard to the applicant's right to quiet enjoyment. The applicant reported the matter vide OB No. 14126/0612024 at 1048hrs.



24. The applicant relied on the case of Prosecutor --vs- Stephen Lesinko (2018) KLR where Nyakundi J. outlined the principles that should guide a court in exercising its revisionary jurisdiction and submit that the decision to withdraw the matter before the Honourable Magistrate was grossly erroneous. The further place reliance in the case of Republic -vs-Fahmi Said (2013) eKLR.
25. Counsel further submit that the Honourable Magistrate in this case did not seek to interrogate and establish the true position in this case before marking it as withdrawn under Section 87(a) of the Criminal Procedure Code and consequently, the Prosecutor did not attach any valid evidence for withdrawing the matter and the reason given was also unsatisfactory and it occasioned injustice to the applicant.
26. Further that by allowing withdrawal, the trial Court failed to protect and prevent the abuse of Section 87(a)CPC and it is through the revision of this Honourable High Court that Justice will be served to the Applicant and relied on the case of Wania -Vs- Republic (Criminal Revision E412 of 2021).
27. The Applicant submits that despite the Prosecution having powers to discontinue a case as provided under Article 157(6), (7), (8), (9) and (10) of *the constitution*, such powers must be weighed against the broader doctrine of Justice and in this case, the doctrine of Justice tilt in favour of the Applicant as the offence of threatening to kill boarders a serious threat to life which is a Criminal offence.
28. Counsel submits that the letter dated 8<sup>th</sup> April 2024 from Director of public prosecution headquarters did not explain nor address the main complaint of threatening to kill besides prosecution counsel failing to inform the Applicant about the directive to withdraw the case despite having received the said directive on 11<sup>th</sup> April, 2024. The applicant relied on the case of *Republic -vs- Leonard Date Sekento (Criminal Revision 1 of 2018)* (2019) KEHC 9125(R) (28 March 2019).
29. That drawing from the foregoing, it is discerning that the Prosecution and the Court erred by failing to administer Justice to the Applicant. That the Honourable Magistrate did not bother to interrogate the reasons for the withdrawal of the case and on the other hand, the Prosecutions occasioned a total abuse of their powers by invoking Section 87 (a) carelessly.
30. In conclusion, the applicant submit that it is the duty of this Honourable Court to ensure that the Subordinate court act within the scope of justice and reinstating this suit (Crim No. E0300 of 2023) and revising the decision by the Lower Court will prevent further violation of the Applicants rights in virtue of Article 47 and 50 of *the Constitution* and Section 4 of the *Fair Administrative Action Act* of 2015.

### **Analysis And Determination**

31. The application herein invokes the revisional jurisdiction of this court under Article 165 of *the constitution* which gives the High court powers, in appropriate cases, to review and vary any orders, decision or sentence passed by the trial court if the court was satisfied that the impugned order, decision or sentence was illegal or was a product of an error or impropriety on the part of the trial court. If the court was so satisfied, the law mandated it to make appropriate orders to correct the impugned order, decision or sentence and align it with the law. The above is the import of Section 362 as read with Section 364 of the Criminal Procedure Code.
32. This Court is called upon to exercise its revisionary powers under Section 362 and 364 of the Criminal Procedure Code. Section 362 provides as follows:-

“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.

33. Section 364 of the Act provides for powers of the High Court on revision that;
- (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—
    - (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
    - (b) in the case of any other order other than an order of acquittal, alter or reverse the order
    - (c) in proceedings under section 203 or 296(2) of the Penal Code, the *Prevention of Terrorism Act*, the *Narcotic Drugs and Psychotropic Substances (Control) Act*, the Prevention of Organized Crimes Act, the *Proceeds of Crime and Anti-Money Laundering Act*, the *Sexual Offences Act* and the *Counter-Trafficking in Persons Act*, where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.
34. 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.
35. Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.
36. Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
37. When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.
38. The Director of Public Prosecutions derives his powers from Article 157 of *the constitution*. Article 157(4), (6), (10) & (11) of *the Constitution* provides as follows:
- “157 (4) The Director of Public Prosecutions shall have power to direct the Inspector-General of the National Police Service to investigate any information or allegation of criminal conduct and the Inspector-General shall comply with any such direction.
- (5) ....
  - (6) The Director of Public Prosecutions shall exercise State powers of prosecution and may—
    - (a) institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed;



- (b) take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of the person or authority; and
  - (c) subject to clause (7) and (8), discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions under paragraph (b).
- (10) The Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority.
- (11) In exercising the powers conferred by this Article, the Director of Public Prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.”

39. Section 6 of the [Office of the Director of Public Prosecutions Act](#) states as follows: -

- “6. Pursuant to Article 157(10) of [the Constitution](#), the Director shall—
- (a) not require the consent of any person or authority for the commencement of criminal proceedings;
  - (b) not be under the direction or control of any person or authority in the exercise of his or her powers or functions under [the Constitution](#), this Act or any other written law; and
  - (c) be subject only to [the Constitution](#) and the law.”

35. Under Article 157(11) the D.P.P is mandate to:

- “(11) In exercising the powers conferred by this Article, the Director of Prosecutions shall have regard to public interest, the interests of the administration of justice and the need to prevent and avoid abuse of legal process”

40. In *Justus Mwenda Kathenge vs. Director of Public Prosecutions & 2 Others* [2014] eKLR, it was held at para 8 that:-

“It is now trite that Courts cannot interfere with the exercise of the above mandate unless it can be shown that under Article 157(11):

- (i) he has acted without due regard to public interest
- (ii) he has acted against the interests of the administration of justice,
- (iii) he has not taken account of the need to prevent and avoid abuse of Court process.



These considerations are not new and have over time been taken as the only bar to the exercise of discretion on the part of the 1st Respondent. I say so taking into account the following decisions where the issue has been addressed;”

41. With regard to the powers of the Director of Public Prosecution, *the constitution* under Article 157 (6), (7), (8), (10) and (11) vests him with express powers to prosecute all criminal cases on behalf of the state. He has powers to initiate, take down, continue or choose to discontinue any criminal prosecution before a court of law.
42. The constitutional and statutory responsibility to discharge any of these functions squarely rests with the Director of Public Prosecution. The consideration to initiate or discontinue a criminal proceeding is only to be weighed against the broader doctrine of justice for the public. An important element of the power to initiate, undertake or withdraw any criminal proceedings by the prosecution is to ensure justice is not only seen to be done but that justice is done in the matter.
43. In this context section 87(a) of the Criminal Procedure Code which is relevant to this application permits the prosecutor to apply before the court seized of the case to withdraw the charge or charges facing an accused person at any time before final Judgement. This power is deemed to be exercised in the interest of the administration of justice and to avoid abuse of the process.
44. According to section 87(a) of criminal procedure code, the public prosecutor may with the consent of the court at any time before judgment withdraw from the prosecution of any person and upon withdrawal:-
  - (a) If it's made before the accused person is called upon to make his defence, he shall be discharged, but the discharge of an accused person shall not operate as a bar to subsequent proceedings against him on account of the same facts.
  - (b) If is made after the accused person is called upon to make his defence he shall be acquitted the exercise of judicial discretion in determining between the two parameters is to ascertain that the derived power on both ways is reasonable and rationale to the objective sought to be achieved.
45. The essential character of the office of the Director of Public Prosecution under Article 157 of *the constitution* is that in exercise of its power, the principle of independence is guaranteed and availed to the office. However, while making a decision under section 87(a) (b) of the Criminal Procedure Code the court has to consider whether the withdrawal will lead to conflict with *the constitution*.
46. From the foregoing there are exceptional circumstances where the court will interfere with or check the power Director of Public Prosecution to withdraw cases. Such circumstances include situations where the director of public prosecution acts improperly, not for the interest of justice, acts beyond the powers vested by *the constitution* or carries out some arbitrary objective under the guise of discharging the functions of the office of prosecution.
47. In the case of *Anne Wanja v Republic* [2022] eKLR the court whilst dealing with a similar predicament found as follows;

“The record shows that the prosecution’s case had commenced. In my view, the Applicant, who was the complainant should have been given reasons when the case was terminated since the criminal charges that were before the learned trial Magistrate, involved both the accused persons and the Applicant who was the victim. Therefore, I agree with Mr. Oloo’s submissions that the learned Magistrate ought to have sought reasons from the prosecutor



as to why they were seeking to withdraw the case instead of rubber stamping the request to terminate the proceedings.”

48. Further the role of victim in criminal proceeding has to be taken into consideration. Section 9 of the [Victim Protection Act](#), 2014 provides for the rights of a victim during the trial process as

- (1) A victim has a right to —
  - (a) be present at their trial either in person or through a representative of their choice;
  - (b) have the trial begin and conclude without unreasonable delay;
  - (c) give their views in any plea bargaining;
  - (d) have any dispute that can be resolved by the application of law decided in a fair hearing before a competent authority or, where appropriate, another independent and impartial tribunal or body established by law;
  - (e) be informed in advance of the evidence the prosecution and defence intend to rely on, and to have reasonable access to that evidence;
  - (f) have the assistance of an interpreter provided by the State where the victim cannot understand the language used at the trial; and
  - (g) be informed of the charge which the offender is facing in sufficient details.
- (2) Where the personal interests of a victim have been affected, the Court shall—
  - (a) permit the victim's views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court; and
  - (b) ensure that the victim's views and concerns are presented in a manner which is not—
    - (i) prejudicial to the rights of the accused; or
    - (ii) inconsistent with a fair and impartial trial.
- (3) The victim's views and concerns referred to in subsection (2) may be presented by the legal representative acting on their behalf.

49. A victim is defined in Section 2 of the Victims Protection Act, 2014 as any natural person who suffers injury, loss or damage as a consequence of an offence;

Still on victims, Section 4(2)(b) of the [Witness protection Act](#) provides that;-

“Every victim is as far as possible given an opportunity to be heard and to respond before any decisions affecting him or her is taken.”

50. The question of whether a counsel watching brief for the family of a deceased in a criminal matter can actively participate in the trial on behalf of a victim? And if so to what extent? Was dealt with in the case of Republic vs. Joseph Lentrix Waswa [2016] eKLR where Lady Justice Ali Aroni stated as follows:-

- “29. From the Cited Articles of [the Constitution](#) 2010, provisions of the [Victim Protection Act](#) 2014 and cases cited from within and outside, the law has shifted the traditional parameters of a victim in a criminal case and therefore the arguments advanced by the defence are certainly out of place and would if adopted by court be contrary to the provision of [the Constitution](#) and the



Victim Protection Act, and by all means against progressive jurisprudence. The victims counsel can no longer be considered a passive observer.<sup>30</sup> However the participation cannot be active and parallel to that of the prosecutor as advanced in the Indian case of Sathyavani and as advocated by counsel for the family herein. The above Indian case in that regard is distinguishable as the Victim Protection Act 2014 gives the parameters of involvement during trial to include; the victim's views and concerns at various stages of the trial as the court may determine either directly by a victim or his/her representatives, at plea bargaining, at the level of sentencing or where a decision is likely to affect the right of the victim and not thought out the trial and parallel to the prosecution."

51. Further in the case of Republic v Sammy (Criminal Case 36 of 2019) [2022] KEHC 195 (KLR), in respect to role/place of Watching brief Counsel/Victim lawyer the court rendered itself as follows:-

"This Court finds from the case law unpacked to aid interpretation and application of Section 9 & 13 of VPA a number of concerns arise;

- (a) The victim is now part and parcel of Court proceedings.
- (b) The victim's counsel present raises concerns and views of victim.
- (c) The application by victim's counsel may be made at any stage of the proceedings.
- (d) The victim representation is not restricted to any process as victims counsel is entitled to cross-examine or present evidence or file submissions or reply to application.

So long as;

- (a) The role of DPP/Prosecution is not vitiated interfered with and/or;
- (b) That the tenets of fair trial are not compromised or prejudicial to the accused person.

52. Guided by the above decisions, a victim /complainant is part of the proceedings and views and / or concerns may be raised by Counsel. With the enactment of the victim protection Act, the victim plays a vital role in these proceedings. From the Trial Court record, on 5<sup>th</sup> February 2024, Mr. Mwaita Advocate was placed on record the complainant. However, on 15<sup>th</sup> April 2024 when the matter was withdrawn by the prosecution, the presence of the Advocate watching brief for complainant nor the complainant is not indicated. There was no participation of the complainant nor his Advocate before the court arrived at the decision to withdraw the case.

53. From the foregoing, I find that the victim was not given an opportunity to participate before withdrawal of the case under Section 87(a) of the Criminal Procedure Code in Marigat Criminal Case No. E300 of 2023 on 15<sup>th</sup> April, 2024. From the foregoing, I hereby set aside the trial magistrate's withdrawal order dated 15<sup>th</sup> April 2024. The matter to be placed before another trial Magistrate.

54. Final Orders: -

1. Application dated 29<sup>th</sup> April, 2024 is hereby allowed.



2. Order for withdrawal of Marigat Criminal Case no E300 OF 2023 Vincent Chebii dated 15<sup>th</sup> April 2024 is hereby set aside and the suit reinstated.
3. Marigat Criminal Case no E300 OF 2023 Vincent Chebii dated 15<sup>th</sup> April 2024 to be placed before another trial Magistrate.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 13<sup>TH</sup> DAY OF NOVEMBER 2024.**

**RACHEL NGETICH**

**JUDGE**

In the presence of:

CA Elvis.

Ms.Ratemo for state

Mr.Mwaita for Applicant

