



**Republic v Njogu & another (Revision Case E103 of 2024)  
[2024] KEHC 13610 (KLR) (Crim) (6 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13610 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA  
CRIMINAL  
REVISION CASE E103 OF 2024  
CM KARIUKI, J  
NOVEMBER 6, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**LINUS GITHUA NJOGU & ANOTHER ..... ACCUSED**

**RULING**

1. The accused persons were charged with the offense of robbery with violence contrary to section 295 as read with section 296 (2) of the Penal Code.
2. The Particulars being that on 25/12/2020 at Muchaka village Kinangop Nyandarua county, jointly with others not in court while armed with dangerous weapons, namely a metal bar, robbed Stephen Ndichu Njoroge Kshs. 1000 and 1 kg of sugar and immediately before the time of such robbery injured the said Stephen Ndichu Njoroge.
3. On count two (2), the first accused faced gang rape contrary to section 10 of the Sexual Offence Act.
4. Particulars being that on 25/12/2020 at Muchaka village Kinangop Nyandarua County in association with Daniel Chege Maina and another not before the court, intentionally and unlawfully caused their penis to penetrate the anus of Stephen Ndichu Njoroge.
5. The prosecution called seven (7) witnesses. The accused did not call witnesses.
6. They were convicted and sentenced.
7. Accused one and two were sentenced to twenty-five (25) years in count one and count two fifteen (15) years.



8. For the accused, he lodged appeal No. 064/022 to impugn the trial court judgment. The High court, after hearing the appeal, the conviction and sentence were set aside, and a retrial was ordered.
9. The trial court re-heard the matter afresh, but after reserving judgment, it was discovered that there was an oversight in that the plea was not taken afresh. Thus, under the provision of the Cap 75 CPC and Article 165 COK,2010, the matter before this court is to scrutinize the record under its supervisory jurisdiction and give directions.
10. The details of those powers of the High Court in revision are set out in section 364 of the Criminal Procedure Code which provides;(1)In the case of a proceeding in the 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 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 the 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.
11. (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.
12. This power is also vested upon the High Court by Article 165(6) and (7) of the *Constitution* which provides;(6)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. (7)For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.
13. Under section 362 stated above, the court in an application for revision, is called upon to call for the record and inquire into the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any subordinate court. In so doing, the court ought to scrutinize the record and upon satisfying itself that the matter properly falls for an inquiry under revision, reverse the orders made..The Applicant has invoked this court revisionary power on two grounds; that the trial court erred in commencing with a new or fresh trial instead of proceeding with the old case, and secondly, in denying bail to the Applicant.
14. The issue the court is supposed to give direction on is whether the failure to take plea afresh renders proceedings a nullity.
15. In Misc. Criminal application E020 of 2023 Muriungi versus Republic (2023) KEHC 23784 OF [KLR],the court held that in a criminal case retrial in Kenya, the trial court does not take a fresh plea. A retrial is not a new trial. The High Court sets aside the conviction and sentence, but the retrial does not mean the accused is being charged again.
16. The court relied on guidance in the cases of Kenya Anti-Corruption Commission – versus Gatuto (2015) eKLR, which cited Kajubo versus- State. Also, Wanjiku Kafura versus – Chinga Tea Factory & another (2016) eKLR.



17. Under Article 165, (6) & 7 Laws of Kenya 2010 section 364 CPC this court is empowered to scrutinize the record as the trial court draws its attention and directions suitable in the circumstances of the matter.
18. The court finds no prejudice in failure to take plea afresh as the trial is just a continuation of where the trial court had lost the way thus attracting the orders of the retrial from the High Court.
19. In any case, the accused persons, who are represented by an advocate, have not been prejudiced, nor did they seek to charge the plea.
20. The court has also noted that the High Court had ordered a retrial to be conducted and determined within six (6) months from 20/9/2023.
21. Due to the movement of the court file to and from Engineer and Olkalau law courts, the time for determining it by delivery of judgment lapsed. This court has the power under Article 159 (2) ) where it states; In exercising judicial authority, the courts and tribunals shall be guided by the following principles— (a) justice shall be done to all, irrespective of status; (b) justice shall not be delayed; (c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3); (d) justice shall be administered without undue regard to procedural technicalities;
22. In sum, to ensure that justice is done without undue technicalities which in our instant matter is done by extending the time for determination of this matter as the judgment delivery has been awaiting instant directions.
23. Thus, the court extends the time of determination by three (3) months from the date herein for the trial court to deliver judgment thereof.

**RULING, DATED, SIGNED, AND DELIVERED AT NYANDARUA THIS 6<sup>TH</sup> DAY OF NOVEMBER 2024.**

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**C KARIUKI**

**JUDGE**

