



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

CRIMINAL REVISION NO. E001 OF 2021

THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS.....APPLICANT

RULING

1. This Revision has come to me through a letter addressed to the court by the Office of the Director of Public Prosecutions dated 13th April 2021. The Applicant seeks that the Court revises the orders of the Resident Magistrate Court (Hon. Aduke) issued on 13th April 2021. In the said order, the court directed that No. 248034 P.C. Kevin Kiplangat Ngeno Towet be detained for five (5) days at Silibwet Police station for failing to bond witnesses in a defilement case for more than a year.

2. The Applicant stated in his Application that the Honourable Magistrate made an order for detention at the time without considering all the material facts. He also stated that the Contemnor, P.C. Kevin Kiplangat Ngeno Towet was not the current investigating officer as he handed over the role to No. 248043 P.C. Beatrice Chesang and consequently was a stranger to Criminal Case No. S.O. 3 of 2020 and therefore not responsible for bringing witnesses before court. In addition, the current Investigating Officer had sworn an affidavit dated 3rd March 2021 indicating that she could not trace the witnesses and prayed to the court to have the matter withdrawn under Section 87 (a) until the complainant and the witnesses could be found.

3. The Criminal revision jurisdiction is vested in the High Court under **Section 362 to 366** of the **Criminal Procedure Code Cap 75**. Section 362 provides:-

“Power of the 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.”

4. **Section 364** outlines the manner in which the revision jurisdiction should be exercised. It states as follows:

“Powers of the 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 –

(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.

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 defense:

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.

3.) 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 that

might have been inflicted by the court which imposed the sentence.

4.) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.

5.) When an appeal lies from a finding a 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.”

5. I have perused the proceedings of the trial court in order to satisfy myself as to the correctness, legality or propriety of the impugned orders. According to the record, the matter before the lower court relates to an ongoing Criminal case under the Sexual Offences Act, specifically defilement of a 13-year-old child. The proceedings indicate that the matter has never proceeded to hearing due to the fact that the witnesses have never appeared before court. For this reason, the Prosecution counsel asked the Honourable Magistrate to summon the Investigating Officer on record to come and explain to the Court his failure to summon and avail witnesses.

6. The said officer (now contemnor) attended court on 13th April, 2021 and upon being sworn stated that he was no longer responsible for the said Police file as he had since been transferred from Ndaraweta Police Post to Singorwet Police Post. That he had also handed over the police file to his colleague P.C. Beatrice Chesang.

7. Court orders are sacrosanct and must be obeyed by all to whom they are made or directed. Needless to state, an investigating officer must be diligent on his duties to the court and must at all times be accountable in the administration of justice. However, from the record of the proceedings in the lower court, there is no evidence indicating that the said Contemnor, P.C. Ngeno, had willfully failed to serve the summons on the witnesses. He may not have been diligent in his duties but there is no evidence apparent on the face of the record that he held the trial court in contempt.

8. While the Court has full discretion to determine the manner in which it can deal with the offence of contempt of court, such discretion must be exercised judiciously and in accordance with rules of natural justice. I find that the Order meted out by the lower court directing that the Contemnor be detained for 5 days at Silibwet Police Station was excessive.

9. In the upshot and as guided by Section 364 1 (b), 2 and 3, I set aside the Order dated 13th April 2021 issued by Honourable Aduke and substitute therefor an order that the Contemnor P.C. Kiplangat Ngeno K.T. be released from custody forthwith.

10. This Ruling and attendant Orders be served upon the Officer in Charge, Silibwet Police Station.

11. The trial file be and is hereby returned to the trial court for mention on 19th April 2021 as already scheduled by the trial magistrate.

12. Orders accordingly.

Ruling delivered dated and signed at Bomet this 14th day of April, 2021.

R. LAGAT-KORIR

JUDGE

Ruling delivered in the absence of the parties who shall be served the Ruling and Orders through the office of the Deputy Registrar of this court.