



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL REVISION NO. E098 OF 2021

SAMUEL LOLNGOJINE.....1ST APPLICANT

ALFRED TANUL.....2ND APPLICANT

ISAAC MWANGIRWA.....3RD APPLICANT

DAUGLAS MWENDWA.....4TH APPLICANT

DOUGLAS ONDIEK OMURWA.....5TH APPLICANT

CYRUS ANDUNGU NJAMBI.....6TH APPLICANT

EYOLE MARTIN LOKESHO.....7TH APPLICANT

DAVID MWANGI THIMBA.....8TH APPLICANT

CONSTANT KWOBA MALOBA.....9TH APPLICANT

LEONARD NDUNGU MUIRURI.....10TH APPLICANT

FESTUS KIPTABUT NGETICH.....11TH APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

REVISION RULING

1. This Criminal Revision was placed before this court pursuant to a letter dated 20/9/2021 requesting for revision on the proceedings of 16/9/2021 in CM Criminal Case No.313 of 2019.

2. The letter by the Trial Magistrate stated as follows:-

“The matter herein came up for defence hearing before me on 16/9/2021. The same proceeded and the defence closed their case. It is now pending Judgment on 7/10/2021. I have since noted that the provisions of Section 211 of the Criminal Procedure Code were not complied with as per requirement of the law. Accordingly, I request that the file herein be placed before your Lordship for Revision on the proceedings of 16/9/2021”

3. This Court has power to call for records which have been reported for revision orders under Section 362 of the Criminal Procedure Code which states 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”.

4. I have called for the said record and upon examining the same, I find that the Trial Court did explain to the Accused Persons their rights

under Section 211 of the Criminal Procedure Code.

5. However, only A1, A7, A8, A9 and A10 gave evidence while A2, A3, A4, A5, A6 and A11 adopted the testimonies of A1, A7, A8, A9 and A10.

6. I find that the order to adopt the testimonies of A1, A7, A8, A9 and A10 is not correct since A7 and A8 gave unsworn testimonies while A1, A9 and A10 gave sworn testimonies.

7. I accordingly revise the order that A2, A3, A4, A5, A6 and A11 do adopt the testimonies of A1, A7, A8, A9 and A10 and I direct that A2, A3, A4, A5, A6 and A11 do specifically opt whether they will give sworn or unsworn testimonies and also to adduce their evidence as required by Section 211 of the Criminal Procedure Code which states as follows:-

"(1) At the close of the evidence in support of the charge, and after hearing such summing up, submission or argument as may be put forward, if it appears to the court that a case is made out against the accused person sufficiently to require him to make a defence, the court shall again explain the substance of the charge to the accused, and shall inform him that he has a right to give evidence on oath from the witness box, and that, if he does so, he will be liable to cross examination, or to make a statement not on oath from the dock, and shall ask him whether he has any witnesses to examine or other evidence to adduce in his defence, and the court shall then hear the accused and his witnesses and other evidence (if any).

"(2) If the accused person states that he has witnesses to call but that they are not present in court, and the court is satisfied that the absence of those witnesses is not due to any fault or neglect of the accused person, and that there is a likelihood that they could, if present, give material evidence on behalf of the accused person, the court may adjourn the trial and issue process, or take other steps, to compel the attendance of the witnesses."

8. Section 211 of the Criminal Procedure Code requires that the rights of an accused person be explained to him at the close of the prosecution case and when he is being put on his defence. These rights are:

(a) The right of remaining silent and saying nothing.

(b) The right to make an unsworn statement from the dock in which event the accused is not liable to cross examination by the prosecution.

(c) The right to give sworn evidence from the witness box in which event the accused becomes liable to cross examination by the prosecution if the prosecution wishes.

(d) The right to call witnesses if the accused so wishes.

9. The Court of Appeal in **MARTIN MAKHAKHA VS. REPUBLIC [2019] eKLR** Githinji, Okwengu & J. Mohammed, JJ.A stated as follows:-

"The rights under section 211 of the CPC are crucial rights of an accused person in a trial that are meant to ensure fair trial. When they have been explained to an accused, he responds by electing to proceed as he wishes. His response ought to be taken down and ought to appear on the court record. The accused is then called upon to proceed in the way he has elected."

10. I further direct that Kericho CM's Criminal Case No. 313 of 2019 be placed before the Trial Court for compliance with the Revision Orders.

11. This Revision Ruling to be served upon the Prosecuting Counsel and the Defence Counsel.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 1ST DAY OF OCTOBER 2021.

A. N. ONGERI

JUDGE