

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL REVISION NO. E087 OF 2021

CORAM: R.E. ABURILI, J

MIRIAM ACHWAL NYENDE.....1ST APPLICANT

YUNIA OBIERO KANGU.....2ND APPLICANT

ISAAC NATSE MUSUNDI.....3RD APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Application seeking revision of sentence in Siaya Senior Principal Magistrates' Court in Criminal Case No. 129 of 2021, E604 of 2021 and 557 of 2021 on 01.09.2021 by Hon. J.O. Ong'ondo, Senior Principal Magistrate)

RULING

1. This revision matter was filed on 16/9/2021 and availed to my chambers on 20/9/2021. By letter dated 6/9/2021 received into court on 16/9/2021, the complainants and accused in various criminal cases Nos **Siaya PM Cr. Case No. 129/2021, Cr. E604/2021 and Cr. 557/2021** claim that the trial magistrate Hon. J. Ong'ondo, Senior Principal Magistrate, had rejected their application through the Prosecution to have the charges of obtaining money by false pretences facing the accused persons Yubia Obiero Kangu, Isaac Natse Musundi and Vincent Shatuma Natse dropped or withdrawn, on account that the Complainant Miriam Achwal Nyende had been paid - compensated by the accused person hence she did not wish to continue with the cases against the accused persons.
2. I called for the files in issue as contemplated in Article 165(6) and (7) of the Constitution. It is until today that the files in issue have been availed to this court long after the request.
3. I have nonetheless perused all the files in which the Complainant claims that the court refused to have the charges withdrawn. I notice that Hon. Ong'ondo, Senior Principal Magistrate was only dealing with **Criminal Case No. 129/2021** and **Criminal Case No. E604/2021** which was later withdrawn on 28/9/2021 under Section 87(a) of the Criminal Procedure Code. Thereafter, Hon. Ong'ondo was transferred from this station. The matter was taken before Hon. Lester Simiyu, Principal Magistrate when it was withdrawn and the accused discharged.
4. **Criminal Case No. E557/2021** on the other hand was terminated vide a **Nolle prosequi** dated 30/9/2021 entered on 30/9/2021 before Hon. Lester Simiyu, Principal Magistrate.
5. Similarly, **Criminal Case No. E604** was terminated vide a withdrawal under **Section 87(a) of the Criminal Procedure Code on 1/9/2021**.
6. **Criminal Case No. E557/2021** was equally withdrawn under **Section 87(a) of the Criminal Procedure Code** after it was consolidated with **Cr. E604/2021**.
7. It follows that no file is pending hearing and consideration by the trial court for this court to give any directions. The request for revision is overtaken by events.
8. Accordingly, this file is hereby closed.

Dated, signed and delivered at Siaya, this 18th Day of November 2021

R.E. ABURILI

JUDGE