



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL REVISION CASE NO. E357 OF 2021**

**MATHEKA KAMENE SUSAN.....1<sup>ST</sup> APPLICANT**

**NGII ANNAHSITACIA.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... RESPONDENT**

**RULING**

The applicants **MATHEKA KAMENE SUSAN** and **NGII ANNANSITACIA**, both moved this court by way of a Notice of Motion application dated 1.9.2021. The application seeks orders of revision of the lower courts orders issued on 18.8.2021. The orders aggrieved of were to the effect that the case do proceed to hearing as then fixed. The application of the applicants for an adjournment was dismissed and the case proceeded to hearing and duly took the evidence of the first witness (PW1).

By this application, the applicants now seek that the orders of the lower court be revised and set aside and the case to be ordered to start de novo before a different advocate.

This matter had been fixed for submissions by the parties for 18.11.2021. however, the advocate for the applicants has brought the same up today in view of the urgency involved and pleaded once again that an order of stay of the lower court proceedings do issue. It has come out that the issues being raised in this application are issues of law which could he handled today to avoid any delay in this case. I have accordingly considered the short submissions made by the parties.

I have also perused the lower court file. It is clear that when the matter came up for hearing on 18.8.2021, the applicants were represented by learned counsel. The application for adjournment was dismissed and the case proceeded with the evidence of at least 1 witness. The counsel present for the applicants had no questions to ask the witness on cross examination.

Principally, this court has not been shown any impropriety, incorrectness or illegality in the orders made by the trial court. These are the 3 standards that an applicant who comes before the court under the Revision rules (section 362 of the Criminal Procedure Code) must meet. In any case, if even if the evidence of PW1 was taken in the manner that it was by the learned trial magistrate, the applicants would still reserve the right to have the witness recalled for cross examination or further cross examination. Otherwise, as shortly submitted and pointed out by counsel for the state, no specific provision of the law would come to the rescue of the applicants on the prayer to start the case de novo.

This court however, appreciates the age old principle in jurisprudence that justice must not only be done, but must also be seen to be done. To allay any fears that the applicants may have with the learned trial magistrate Hon. E. K. Kimilu (SPM), and pursuant to prayer (f) of this application, I order that this matter be mentioned before the Hon Chief magistrate, Milimani Law Court tomorrow 10.11.2021 for allocation for trial before a different magistrate. Such trial would then proceed in the normal way.

The plea for the orders of the learned trial magistrate of 18.8.2021 to be reviewed or set aside, lacking in any merit, is otherwise dismissed.

Orders accordingly.

**D. O. OGEMBO**

**JUDGE**

**9.11.2021**