

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL REVISION NO. 2 OF 2019

CHARLES RAUTO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant has moved the court by way of Notice of Motion under Article 159 (2) of the Constitution of Kenya and sections 362 and 364(1) (b) of the Criminal Procedure Code, cap. 75 laws of Kenya. He is seeking the court to make appropriate orders upon satisfying itself as to the legality of the ruling that was issued on 27th February 2019. The application is premised on the following grounds:

- a) That the applicant is aggrieved by the ruling by the trial court that required him to produce a motor vehicle in his custody.
- b) That there is a pending civil ruling requiring the applicant to produce the said motor vehicle.

2. The application was opposed by the state through M/s Ngari learned counsel who contended that the review orders are not merited.

3. Section 362 of the Criminal Procedure Code provides:

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.

Whereas section 364(1) (b) of the Criminal Procedure Code provides:

(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—

(b) in the case of any other order other than an order of acquittal, alter or reverse the order.

4. In order for this court to address its mind to the application made, it is necessary for the court to satisfy itself after looking at the entire record of proceedings. What the applicant availed to the court is selective proceedings which starts at the ruling dated 13th July 2018. It may be argued that I would have called for the original record. I however did not do so for this would not have added any value. The handwriting of the trial magistrate is one that I have previously tried to read with no success. The applicant's counsel ought to have applied for the entire proceedings so as to aid this court.

5. It would be dangerous for me to make a decision based on the portion of record at my disposal. I therefore decline to make any orders. The application is accordingly dismissed.

DELIVERED and SIGNED at BUSIA this 6th day of May, 2019

KIARIE WAWERU KIARIE

JUDGE