

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

REVISION NO. 3 OF 2018

REPUBLIC.....APPLICANT

VERSUS

JOSEPH KIMELI CHEBII.....RESPONDENT

RULING

[1] This is an application for revision that was initiated on **5 February 2018** by the firm of **Wambua Kigamwa & Company Advocates** on behalf of one **M C S**, who was the victim of the crime of defilement that was the subject of the **Senior Principal Magistrate's Criminal Case No. 862 of 2014: Republic vs. Joseph Kimeli Chebii**. The Respondent, who was the accused person before the lower court, was acquitted by the Court in a Judgment delivered on **24 January 2018**. The victim accordingly asked that the record of the criminal proceedings before the lower court be called for examination as to their correctness, legality and propriety.

[2] When the matter came up for hearing on **28 June 2018**, **Mr. Mwetich**, Learned Counsel for the Respondent objected to the parties being given a hearing, contending that, in a revision, no right of audience is available to any party to the proceedings; and that it is for the Court to consider the proceedings and make a determination on the basis thereof. Counsel relied on **Section 365** of the **Criminal Procedure Code, Chapter 75 of the Laws of Kenya** and urged the Court to proceed accordingly. **Ms. Mokuu** for the State was in agreement with the submissions of **Mr. Mwetich**. She was also of the view that the parties have no right of audience in this matter.

[3] In his response to the objection, **Mr. Kigamwa** urged the Court to find and hold that, since **Section 365** of the **Criminal Procedure Code** employs the word "**party**" as opposed to "**accused**", revision proceedings are not limited to accused persons. He pointed out that no specific requirement or procedure has been set out for leave purposes, and therefore urged the position that a right exists unless expressly barred by law. He accordingly prayed that this Revision be proceeded with for hearing in open court and in the presence of the parties.

[4] **Section 365** of the **Criminal Procedure Code** is explicit enough. It provides that:

"No party has a right to be heard either personally or by an advocate before the High Court when exercising its powers of revision:

Provided that the court may, when exercising those powers, hear any party either personally or by an advocate, and nothing in this section shall affect section 364(2)."

[5] It is manifest therefore that revision as a remedy is not limited or available only to accused persons. Any party to a criminal proceeding before a subordinate court is at liberty to seek revision, where appropriate. It is also manifest from the proviso that **Section 365** is inapplicable to the situations envisaged under **Section 364(2)** of the Criminal Procedure Code. This being a Revision that seeks to reverse the acquittal by the lower Court of the Respondent is, doubtless, a matter falling within the purview of **Section 364(2)**, which states that:

"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 defence..."

[6] It is manifest therefore that **Section 365** of the **Criminal Procedure Code** is inapplicable herein, having been expressly ousted by the proviso thereto. In any event, the Court does retain the discretion to grant audience even under **Section 365** of the **Criminal Procedure Code**; and therefore, since there would be no reason to deny parties who wish to be heard a hearing, I would not be averse to according the Applicant a hearing. For these reasons, the objection is clearly untenable and is hereby overruled.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 5TH DAY OF JULY 2018

OLGA SEWE

JUDGE