



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL REVISION NO. 377 OF 2018

REPUBLIC.....PROSECUTOR

-V-

MWITI STANLEY MUREA.....APPLICANT

RULING ON REVISION

1. **Stanley Murea Mwiti (“the Applicant”)** was the accused in the *Tigania Criminal Case No. 906 of 2015*. The applicant has, through a letter dated 7th November, 2018, sought the revision of orders made on **19th October 2018** by Hon Sogomo Gathogo.
2. In the application the applicant complained that; the trial magistrate had vested interest in his case and was driven by pure malice; that the magistrate had called him “stupid” in open court when he requested enough time to be well as he was sick; that the magistrate was hot tempered whenever he is in court and that on 9th October 2018, the Director of Public Prosecution had indicated that, since the evidence in the matter was not sufficient, the matter should be withdrawn under *section 87B of the Criminal Procedure Code*.
3. The applicant further contended that the trial court exhibited an act that belittles the administrative function of the office of Director of Public Prosecution when he declined the prosecution’s application to withdraw the case under *section 87B of the Criminal Procedure Code*.
4. This court has called for and perused the trial court’s record. What the applicant is seeking is the revision of the ruling by the trial court delivered on 19th October 2018, declining an application by the prosecution for withdrawal of the case under *section 87 (b) of the Criminal Procedure Code*.
5. *Section 362 of the Criminal Procedure Code* provides 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.

6. In **Republic –vs- James Kiarie Mutungei [2017] eKLR** Nyakundi J. held: -

“The rationale of the High Court as a revisionary authority can be initiated by an aggrieved party, or suo moto made by the court itself, call for the record relating to the order passed or proceedings in order to satisfy itself as to the legality, or propriety, correctness of the order in question. The scope of revision therefore is more restrictive in comparison with the appellate jurisdiction which requires the high court to rehear the case and evaluate the evidence in totality by the lower court to come with a decision on the merits... In considering similar provisions under the Indian Criminal Procedure Code and applicable statute on revisional powers, the Supreme Court in the case of Sriraja Lakshmi Dyeing Works v Pangaswamy Chettair [1980] 4SCC 259 said as follows:

“The conference of revisional jurisdiction is generally for the purpose of keeping tribunal subordinate to the revising tribunal within the bounds of their authority to make them act according to law, according to the procedure established by law and according to well defined principles of justice. Revisional jurisdiction as ordinarily understood with reference to our statutes is always included in appellate jurisdiction but not vice versa. The question of the extent of appellant or revisional jurisdiction has to be considered in each case with reference to the language employed by the statute. The dominal ideal conveyed by the incorporation of the words to satisfy itself under section 25 read as which has similar provisions with our section 362 of the criminal Procedure Code (Cap 75 of the Laws of Kenya) (emphasis mine) is essential a power of superintendence. The scope of the revisional powers of the high court where the high court is required to be satisfied that the decision is according to law as to the legality and propriety of the order under revision, which is quite obviously as much wider jurisdiction. That jurisdiction

enables the court of revision, in appropriate cases, to examine the correctness of the findings of facts also, though the revisional court is not a second court of appeal (emphasis supplied.)”

7. In the instant case, the trial court declined an application by the prosecution for the withdrawal of the case under **section 87 (b) of the Criminal Procedure Code**. The court gave its finding as to why it arrived at that conclusion whereupon both the prosecution and the accused intimated to court that they would appeal. However, no appeal was preferred by either of the parties whereupon the applicant was subsequently placed on his defence.

8. The record shows that in **Misc application No. 103 of 2018**, the applicant had raised similar grounds which he has now raised. In that application, the applicant had sought the transfer of the criminal case against him from the subject court to any other court other than Tigrania Law Courts. That application was heard and dismissed by Ong'injo J on 4th October 2018.

9. I have on my part perused the record and the orders made on 19th October, 2018. The court gave a detailed ruling rejecting the prosecution's application to terminate the proceedings before it. The court seems to have been persuaded, quite rightly, by the provisions of **Article 157(8) of the Constitution** to the effect that the Director of the Public Prosecutions may not discontinue any criminal proceedings without the permission of the court.

10. I have seen the provisions of the **Criminal Procedure Code** relied on by the Director of Public Prosecutions. I should clarify here that, the DPP no longer has absolute power to discontinue prosecutions at will. Any law that will declare otherwise will be in contravention of the Constitution and will be null and void to that extent. His powers to discontinue any prosecution under **section 87 of the Criminal Procedure Code** or any other law is subject to the consent of the court as decreed by **Article 157(8) of the Constitution**.

11. In the present case, the trial court found that the reason advanced by the DPP to terminate the prosecution had no basis as the trial court had already placed the applicant on his defence. In other words, the trial court held that the DPP was not right to hold that there was no sufficient evidence to continue with the prosecution, because a competent court had already held that it was satisfied that there was a case to be answered.

12. Further, under **section 9 of the Victim Protection Act, 2014**, the victim must be informed and his/her views taken when any step in the proceedings is being taken affecting his/her interest. This means that the DPP cannot purport to withdraw a case without having involved the victim/complainant. That in effect means that the DPP's powers to terminate proceedings are not absolute. In this case, there is nothing to show that the victim had been involved in the proposed withdrawal of the charges.

13. Accordingly, I am of the view and so hold that the trial magistrate did not fall into any error when he declined to accept the attempted withdrawal. There was no any irregularity in what transpired before the trial court on the 19th October, 2018 to warrant any review.

14. In this regard, I find no merit in the application for revision and I consequently decline the same. The trial court original file be returned to that court.

DATED and DELIVERED at Meru this 20th day of November, 2018.

A. MABEYA

JUDGE