



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CRIMINAL REVISION NUMBER 131 OF 2014

REPUBLICPROSECUTOR

VERSUS

ANTHONY THUO KARIMI.....ACCUSED

RULING

By requesting that this case be brought before the high court for revision, the accused's advocate in a letter dated 21st October 2014 cited the provisions of the Criminal Procedure Code^[1] which provide for powers of Revision conferred upon the High Court by the said sections. Section 362 (2) of the Criminal Procedure Code^[2] provides that:-

“The High Court may call 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 subordinate court.”

Further, Section 364 confers the powers to the high court to revise lower courts decisions and these powers include (a) exercising any of the powers conferred on it as a court of appeal by sections 354, 357 and 358 and (b) in the case of any other order other than an order of acquittal, alter or reverse the order. Also relevant are the provisions of Article 165 (6) and (7) of the constitution of Kenya 2010 which provides as follows:-

(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

Clearly, from the constitutional and statutory provisions cited above, the High Court has wide powers to review proceedings in subordinate courts and other judicial and quasi-judicial bodies except superior courts.

In the above referred letter, counsel states that the third accused was discharged under Section 87 (a) of the Criminal Procedure Code^[3] following an application by the prosecution who stated that there was no evidence against the said accused person. The record shows that the third accused person asked for the case to go on, but the court ordered that the case be withdrawn under Section 87 (a) of the Criminal Procedure Code and explained the implications of the withdrawal to the accused person.

The case proceeded against the first, second and fourth accused persons. The first accused persons pleaded guilty and was convicted while the prosecution subsequently withdrew the case against the second and fourth accused persons.

Counsel for the third accused person against whom the case was withdrawn under section 87 (a) of the Criminal Procedure Code[4] now opines that:-

- i. Continuation of the condition on the discharge of the third accused whereas the matter has been concluded is prejudicial to his client.
- ii. The ground upon which the impugned order was sought and made demands for absolute discharge.
- iii. That the said accused person now wants the High Court to call for the said file and make the aforesaid release absolute.

The issues raised by counsel for the third accused in this case calls for a close examination and understanding of the provisions relating to revision. In this regard reference can be made to a judgment delivered by the Indian Apex Court in the case of *Krishnan and Anr. Vs. Krishnaveni and Ano*[5] where the court extensively interpreted the relevant provisions of the Indian Criminal Procedure Code. Some of the observations made in this regard in the said case are reproduced herein below for the sake of reference: -

*"It is seen that exercise of the revisional power by the High Courtis to call for the records of any inferior Criminal Court and to examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court and to pass appropriate orders. Section 397 gives powers to the High Court to call for the records as also **suo motu** power under Section 401 to exercise the revisional power on the grounds mentioned therein, i.e., to examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior Court, and to dispose of the revision in the manner indicated under Section 401 of the Code. The revisional power of the High Court merely conserves the power of the High Court to see that justice is done in accordance with the recognized rules of criminal jurisprudence and that its subordinates Courts do not exceed the jurisdiction or abuse the power vested in them under the Code or to prevent abuse of the process of the inferior Criminal Courts or to prevent miscarriage of justice.*

*The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to meet out justice.The power of the High Court, therefore, is very wide. However, High Court must exercise such power sparingly and cautiouslyHowever, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior Criminal Court in its juridical process or illegality of sentence or order." **(Emphasis added)***

The basic object behind the powers of revision is to empower the high court to exercise the powers of an appellate court to prevent failure of justice in cases where the code does not provide for appeal. The power however is to be exercised only in exceptional cases where there has been a miscarriage of justice owing to: - a defect in the procedure or a manifest error on the point of law, excess of jurisdiction, abuse of power, where decision upon which the trial court relied has since been reversed or overruled when the revision appeal is being heard.

The revisional powers though are quite wide, have been circumscribed by certain limitations. Such as (a)

in such cases where an appeal lies but there is no appeal brought in, originally no proceeding by way of revision shall be entertained at the instance of the party who would have appealed.^[6] (b) The revisional powers are not exercisable in relation to any interlocutory order passed in any appeal, inquiry and trial. (c) The court exercising revisional powers is not authorized to convert a finding of acquittal into one of conviction into one of conviction.^[7]

The revisional powers of a High Court are very wide. Such powers are intended to be used by the High Court to decide all questions as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed by an inferior criminal court and even as to the regularity of any proceeding of any inferior court. The object of conferring such powers on the High Court is to clothe the highest court in a state with a jurisdiction of general supervision and superintendence in order to correct grave failure or miscarriage of justice arising from erroneous or defective orders. Section 364 (1) (a) confers on the High Court all the powers of the appellate court as mentioned in Sections 354, 357 and 358.

The revisional powers are entirely discretionary. There is no vested right of revision in the same sense in which there is vested right of appeal. These sections do not create any right in the litigant, but only conserve the powers of the High Court to see that justice is done in accordance with the recognized rules of criminal jurisprudence and that subordinate criminal courts do not exceed their jurisdiction, or abuse the powers vested in them by the Code. Guided by the above legal interpretations, the question that begs to be addressed in this case is whether or not the withdrawal in question can be challenged on its correctness, legality, propriety or regularity as provided under section 362 of the Criminal Procedure Code. Section 87 (a) of the Criminal Procedure Code provides for withdrawal of cases. The prosecutor made the application, the accused opposed and insisted that he wanted the case to proceed and the court made a ruling on the issue. The procedure followed was correct and provided for under the law. I find nothing at all in the proceedings to suggest that the matter falls under the requirements for revision, namely, correctness, legality, propriety or regularity of the order nor do I find any other sufficient reason to exercise the revision powers of the court.

If the accused is not happy with the decision, then he ought to have filed an appeal. The power of revision cannot be exercised where the accused could have appealed.

In my view, the issues raised by counsel for the accused do not all fall under the provisions for revision. Accordingly I find that this is not a proper case for the court to exercise its powers of revision.

Dated at Nyeri this 9th day of February 2016.

John M. Mativo

Judge

^[1] Cap 75 Laws of Kenya

^[2] Ibid

^[3] Ibid

^[4] Ibid

^[5]{1997} 4 SCC 241

[6] See Section 365 (5), CPC

[7] See Sectio 364 (4), CPC