



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
CRIMINAL REVISION NO. 1 OF 2014

JEAN WANJIRU MWANGIAPPLICANT

VS

REPUBLIC.....PROSECUTOR

RULING

JEAN WANJIRU MWANGI the Applicant herein has brought an application for revision vide a notice of Motion dated 6th October 2014. She is asking this court to invoke its power under **Section 362** to review **correctness, legality** and **propriety** of the ruling dated 7th August 2013 made by Honourable S.N. Ngungi Principal Magistrate Chief Magistrate's court in criminal case NO. 878 of 2012.

The grounds listed on the application are:

1. That motor vehicle registration NO. KAX 617 V Toyota Corolla is detained by the police as an exhibit in a case where a suspect is still at large.
2. That the suspect had hired the motor vehicle registration KAX 617 V and allegedly used it to transport narcotic and after being flagged down evaded arrest and abandoned the said motor vehicle.
3. That the Applicant is the registered owner.
4. That the accused is yet to be arrested despite a warrant of arrest.
5. That the motor vehicle is wasting away due to wear and tear.
6. That the investigating officer has already taken photographs of the car which could be produced as exhibits if required by the trial court.
7. That it is only fair and just that the motor vehicle is released to the applicant.

I have looked at the affidavit and the annexures thereto and Considered the same in relation to the application and the law applicable herein.

The power to revise a decision of the subordinate court by the High Court is donated by **Section 362** of the **Criminal Procedure Code** which has been invoked in this application. **Section 362** of **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 purposes 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.

In addition to the above provision, this court is given supervisory powers by the **Constitution** under **Article 165(6)** and **(7)** which provides:

“The High court may call for the record of any proceedings before any subordinate court.....and may them make any order or give direction it considers appropriate to ensure the fair administration of justice”. The Applicant has not invoked the supervisory jurisdiction of this court over the subordinate which is seized with criminal case.

I have carefully considered all the grounds relied on by the Applicant and the affidavit in support of the application for revision. The Applicant has not faulted the ruling of the trial court on any of the above grounds provided by the statute that is correctness, legality, propriety and /or regularity. This court has looked at the proceedings of the subordinate court and notes that two attempts had been made by the Applicant to have the motor vehicle released to her. There is a notice of motion dated 30th January 2013 which was canvassed in court on 25th February 2013. The said application was dismissed by the subordinate vide a ruling dated 5th March 2013. Another similar motion dated 27th June 2013 was filed on 1st July 2013 and was heard on 23rd July 2013 and vide a ruling which is now the subject matter of this revision the same was dismissed based on the earlier ruling that the court had made. I have considered the reasoning of the trial magistrate in the ruling dated 7th August 2013 and I do not find any illegality or anything improper or wrong to warrant a revision by this court. If the Applicant is dissatisfied/aggrieved with the ruling of the subordinate court, the best and proper option in the circumstances was to appeal. This is because an appeal lies on a ruling of a court where a party feels dissatisfied or aggrieved. The court finds that revision can only be applied under **Section 362 of Criminal Procedure Code** and cannot be used as a shortcut of an appeal. The provisions of **Section 364(5)** shuts the door for the Applicant herein.

It is now settled that this court can only interfere with a trial court’s discretion where there is evidence that the trial court’s order or judgment is against legal principles or that the court failed to take into consideration obvious relevant factors.

In the case of **REPUBLIC –VS JAGAN AND ANOTHER (2001) KLR 590** Honourable Justice Hayanga stated

“The High court must be satisfied that there exist to a sufficient extent circumstances entitling it to vary any order or a decision of a court below” and proceeded to observe that the question to be posed it whether the trial court acted upon a wrong principle or overlooked material factors. Applying the ratio decidendi of this authority this court notes that although the application is unopposed, the Applicant really has not satisfied the standards set by law for me to invoke my powers under Section 362.

The exhibit held by the police is still in the control of the police and if it is true that they are not opposed to the release of the motor vehicle then really they do not require any orders from this court or the trial court to release the vehicle to the Applicant. The same has not been produced in court as an exhibit to form a subject of this court to warrant orders for the release. If the office of the Director of Public Prosecution who are prosecuting the case in the trial court no longer wish to have the car produced physically as an exhibit, I do not see why they cannot liaise with the police to have the car released to the Applicant without involving the courts. Having said that I do not find any merit in the application presented before me. The same is dismissed.

R.K. LIMO

JUDGE

DATED, SIGNED AND DELIVERED AT KERUGOYA THIS 13TH DAY OF NOVEMBER 2014
in the presence of

The Applicant

Mr Maina advocate for the Applicant

Mr Sitati for state

Mbogo Court Clerk