



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
APPELLANT SIDE
CRIMINAL REVISION NO. 43 of 1997
(From Original Order in Criminal Case NO. M. 12724 of 1996 of
the Subordinate Court of the Resident Magistrate's Court at
City Hall

ROBERT MUCHIRI MUHURI & ANOTHER t/a ROMUWA HARDWARE AND FOUR
OTHERS.....APPLICANTS

V E R S U S

REPUBLIC.....RESPONDENT

R U L I N G

This is a criminal Revision file. It has been opened through the filing of a notice of motion dated the 16th of October, 1997, an affidavit and a certificate of urgency. The applicants are tenants of the landlord and owner of plot LR 209/231/3 one Ramesh Datt Vashishit. They prayed for orders that a criminal case number 12724 of 1996 whereby the state brought a criminal charge against Ramesh Datt Vashisht - the landlord through the Nairobi City Counsel and under the health act.

The Health Officers of the council called upon the landlord to repair his building due to health hazard. In order to do this the tenants must give vacant possession.

Instead of appealing against this order the tenants (who are not party to the suit) brought this application under section 356,362 and 264 of the Council Procedure Code and all other enabling provision of the law.

She prayed that the criminal case 12724 of 1996 be called and examined with a view of satisfying itself to the correctness and legality of the ruling or order made.

Further to grant Stay of Execution (mainly the tenants to give vacant possession to the land-lord). Pending the determination of the Revision Application.

The attorney General appears as ato the court. The tenants are represented by M/S: E.M. Ngang'a and Company advocates. Mrs A.W. Muchemi for the landlord. There was no appearance for the Nairobi City Council, a stay of execution was granted by Hon. Patel.

I did request the parties (except the Nairobi City Council who have never attended court dispute summons being issued to them) to address me on section 365 of the Council Procedure Code.

`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 never exercise those powers hear any party either personally or by an advocate and nothing in this section shall effect section 364(2)'.`

The advocate for the tenants stated that he filed an application under certificate of urgency. Because he was heard he was then seen to have been allowed audience. The advocate for the landlord was also unable to fully explain why she has appeared. Section 363(2) cpc reads:

'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.

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned'.

My understanding of section 365 and 364 (2) cpc. is that no party has a right to be heard when a court exercises its rights and powers of revision either personally or by an advocate.

It is at the discretion of the judge in exercising those powers that a party may be heard.

The procedure under the Revision sections of the criminal Procedure code is not laid out. The correct method of coming into court is by way of a letter written to the High Court, Registrar explaining the irregularity, propriety finding and sentence.

The Registrar would open a Revision file and write a letter to the Hon. Judge seeking for orders of review. Section 363(1) and (2) cpc states that : '

A subordinate court of the first class may call for and examine the record of any criminal proceedings of a subordinate court of a lower class than it and established within its trial limits of jurisdiction for the purposes of satisfying itself as to the legality, correctness or propriety of any findings, sentence or order recorded on and as to the regularity of the proceedings.

(2) If a subordinate court acting under subsection (1) considers that a finding, sentence or order of the court of lower class is illegal or improper or that the proceedings were irregular, it shall forward the record with its remarks thereon to the High Court'.

The High court itself has powers to call for and examine the record of any current proceedings before any subordinate court'.

If a party wishes to bring such irregularity to the court he writes a letter. I believe that the Registrar of the court once he places the file of it before the Hon. Judge the discretion is exercised by that judge in his powers of Revision. Section 364 CPC embodies the powers of the High court on revision.

Section 361(1) In the case of a proceeding in a subordinate court the record of which has been called for or which otherwise comes to its knowledge the High Court may:

(a) In the case of a conviction execute any of the powers conferred on it as a court of appeal by section 354, 357 and 358 or may enhance the sentence.

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

This section 364(2) dealt with situations falling under sub-rule 1(a) and (b) It is therefore only courts discretion under section 365 that allows the parties to be heard.

The landlord was found guilty and sentence. Further orders were made effecting the tenants namely that they vacate from their business premises within 14 days.

The tenants have no right of appeal. Their form is this revision on the grounds that the proceedings were procedurally irregular.

I hereby rule that the parties have no right to be heard. They have not demonstrated that the courts

discretion be exercised in allowing them to be heard.

I hereby rule that section 365 cpc do apply and this revision handled as per that section.

Dated this 17th Day of December 1998.

M. A. ANG'AWA

JUDGE