



**Republic v Ravji & another (Criminal Revision E1576 of 2024)  
[2025] KEHC 13369 (KLR) (Crim) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13369 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL REVISION E1576 OF 2024  
AM MUTETI, J  
SEPTEMBER 17, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**PATEL RAVJI ..... 1<sup>ST</sup> RESPONDENT**

**DEVRAJ RALJI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant by way of a letter dated the 4<sup>th</sup> November 2024 moved this court by way of a Revision seeking to reverse the decision of learned Hon. Dolphina Alego SPM declining to grant leave to withdraw Milimani CM’s Court criminal case No. 1953 of 2019 under Section 87(a) of the [Criminal Procedure Code](#).
2. The applicant contended that following the Ruling by the learned Hon Magistrate there were far reaching adverse ramifications of proceeding with Criminal Case No. 1953 of 2020 at Milimani since according to the applicant there were compelling grounds for the matter to be withdrawn.
3. The applicant gave the following background of the matter to this court;-
  - a) The accused persons were charged before the Chief Magistrate’s Court at Milimani with 4 counts of forgery and one count of perjury to wit; -
  - c) Forgery contrary to section 350 of the [Penal Code](#)The particulars were that on diverse dates between 1st day of August 2013 to 11th December 2013 at unknown place with intent to defraud forged the signature of Tom Odhiambo Owiny,



Amsa Jerotich Keitany and Hezbon Omondi on several cash acknowledgement receipts purporting the same to be genuine signatures of the complainants

- d) Perjury contrary to section 108(1) A as read with Section 110 of the [Penal Code](#).
- The particulars are that on the 7th day of March 2019 at The Environment and Land court in Milimani in Judicial proceedings of *ELC case no. 114 of 2019* presented forged documents before the court which were material in the proceedings.
- b). The brief facts of this matter are that on the 4th May 1999 Tom Odhiambo and Amsa Jerotich were allotted a joint property in Embakasi L.R 209/11309 and later on they decided to sell the property.
- c). Tom Odhiambo and Amsa then sold the property to Patel Ravji Lalji for Kshs. 50,000,000 with the sale agreement being drawn by Omondo Ogonji advocates.
- d) The agreement was that the purchaser was to pay Kshs. 30,000,000 with the balance of Kshs. 20,000,000 to be paid on completion to the vendor's advocate within 21 days.
- e). Before paying the balance of Kshs. 20,000,000 the purchaser who is the accused herein requested to have the property transferred to his name so that he would use the property to secure a loan to clear the outstanding balance.
- f) The property was transferred to him however he never cleared the balance and several letters were written to him by the seller's advocate however the accused never responded to any and refused to pay the balance.
- g). In the year 2019 the sellers got summons to appear before court in Criminal Case No. 1953 of 2020 where the purchaser of the property the accused herein had requested for orders to have the sellers Tom Odhiambo and Amsa Jerotich be removed from the land and the accused herein handed over vacant possession of the land. h). The complainants went to court as summoned and on perusing the file they saw documents that had been filled by the purchaser which is a letter dated 1/8/2013 purportedly written by Tom Odhiambo and Amsa Jerotich that they have authorized Kshs. 10,000,000 to be remitted to Hezbon Omondi on their behalf.
- i) Also in the court file was a Cheque dated 11/12/2013 that purported Hezbon had received Kshs. 10,000,000 on behalf of the sellers. j). Hezbon Omondi denied ever having received any monies or signed any document on behalf of the sellers as he was never party to the transactions.
- k). The investigating officer then wrote a letter to the ELC court on 21st May 2020 requesting for the documents filled in Criminal Case No. 1953 of 2020 and also obtained forged documents which were a payment receipt for plot no 209/11309 dated 1/8/2013, a Cheque dated 11/12/2013 for Kshs. 10,000,000 and a Cheque dated 15/11/2013 purported to have been received by Hezbon Omondi.
- l). All the documents were forwarded to the document examiner together with the specimen signatures and known handwritings of Tom Odhiambo, Amsa Jerotich and Hezbon Omondi.
- m). The 1st accused person was also charged in Milimani Criminal Case No. 2308 of 2020 of similar charges emanating from a different transaction with Hezbon Omondi; the charges were forgery, perjury and uttering documents.
- n). That part from the two matters, Patel Lalji was also charged in Kibera criminal case number 180 of 2020 on similar charges emanating from a different transaction between himself and Hezbon Omondi.



- o). That Patel Lalji Ravji also filed a complaint against Hezbon Omondi whereof he alleged that forgery of the documents that Hezbon Omondi had accused him of forging and a decision to charge Hezbon was made in Kamukunji CR 112/293/2022.
- p). That before Hezbon Omondi took plea in Kamukunji CR 112/293/2022, the DPP noting the numerous letters received from the two antagonists, the inter relatedness of the complaints and the new evidence in in Kamukunji CR 112/293/2022, the DPP reviewed the decision to charge in the matters.
- q). The DPP Having holistically evaluated the evidence in these matters and considering that none of the matters has a monetary claim in it, and noting that all the charges herein emanate from commercial transactions by all the parties herein, it was clear that there is an abuse of the prosecution process by both the accused and the complainants herein towards stealing a match on the other in a commercial transaction.
- r). The DPP then applied to have CR 1953 of 2020 and CR 2308 of 2020 withdrawn from court under section 87 (a) CPC
- s). However, the trial court in Cr 1953 of 2020 declined to withdraw this matter under section 87(a) CPC
- t). That we feel that the state has been unfairly treated and that the court erred in finding that the DPP cannot withdraw a matter under section 87(a) CPC without the consent of the complainant.
- u). That the state also contends that the court erred in disallowing the withdrawal of the matter under Article 157(2) of the Constitution.
4. The applicant herein had approached the trial court pursuant to the provisions of Section 87(a) of the Criminal Procedure Code seeking the permission of the court to withdraw the matter herein
5. The applicant contends that the Constitution and Section 87(a) of the Criminal Procedure Code provide for application for discontinuation of cases.
6. The applicant in his letter wrote that Article 157(6) (c) of the Constitution provides;
- “(c) Subject to clause (7) and (8), discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions under paragraph (b).”
7. The applicant went further to state that Section 87(a) of Criminal Procedure Code provides that;
- “In a trial before a subordinate court a public prosecutor may, with the consent of the court or on the instructions of the Director of Public Prosecutions, at any time before judgment is pronounced, withdraw from the prosecution of any person, and upon withdrawal- (a) if it is made before the accused person is called upon to make his defence, he shall be discharged, but discharge of an accused person shall not operate as a bar to subsequent proceedings against him on account of the same facts;”
8. Further, the applicant contended that the above Constitutional and legal provision must be exercised in accordance with Article 157(11) especially the need to prevent and avoid abuse of the legal process.



9. According to the applicant a Prosecutor is required to constantly review the evidence on record in order to ensure quality prosecution.
10. The applicant cited Section 5 of the ODPP Act which provides for the powers and functions of the Director of Public Prosecutions. Section 5(4) provides that;
 

“The Director shall - (e) review a decision to prosecute, or not to prosecute, any criminal offence.”
11. The applicant also relied on the Office of the Director of Public Prosecutions Guidelines on the Decision to Charge, 2019 which provide the conditions under which a decision to charge can be reviewed. The guidelines also stress the need to ensure continuous review of ongoing prosecutions.
12. In particular the applicant cited Para 4.6 which provides that;-
 

“A review can be conducted by a prosecutor seized of /assigned the matter. Supervisors and the performance management team shall, as a matter of practice, compliance and quality control, regularly review decisions to charge.
13. The applicant therefore urged the court to exercise its powers under Section 362 of the *Criminal Procedure Code* and call for the lower court record and;-
  - a) Determine the correctness, legality or propriety of the Ruling dated 16/9/2024 disallowing the prosecutions application to withdraw this case under section 87(a) *CPC*.
  - b) Determine the correctness, legality or propriety of the proceedings leading to the ruling and order issued on 16/9/2024 by the court disallowing the prosecutions application to withdraw this case without giving cogent reasons.
  - c) Whether there is any provision of law in Kenya that grants courts the authority to require a prosecutor to be directed by a complainant on withdrawing a case, and if so, whether in the circumstances, that drastic order was called for and its regularity and/or correctness considering the provisions of Article 157 (6) (c) as read with Article 157 (8) in the peculiar circumstances of this case.
14. The application is supported by the affidavit of ;;;;;;;;;;;;
15. The applicant has invoked the supervisory jurisdiction of this court under Article 165(6) of the *Constitution*. The applicant has also cited the provisions of Sections 362 and 364 of the *Criminal Procedure Code* which states:-
 

“362. Power of High Court to call for records 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.”
16. The Criminal Procedure further provides under Section 364(1) that;- In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may –
  - (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;



- (b) in the case of any other order other than an order of acquittal, alter or reverse the order.
  - (2) 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.
  - (3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.
  - (4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
  - (5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”
17. It is trite that the court’s jurisdiction on revision is limited to reviewing the legality, propriety, correctness and or regularity of the orders issued by the trial court so as to ensure that there is fair administration of justice.
18. The court does not delve into the merits of the decision as it would do when exercising its appellate jurisdiction and it cannot be justified in substituting its own views on matters of fact or evidence before the trial court.
- a. In the case of *Joseph Nduvi v Republic* [2019] eKLR the court stated: “11. In my considered view, the object of the revisional jurisdiction of the High Court is to enable the High Court, in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court’s revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well.”
19. In the case of *George Aladwa Omwera v Republic* [2016] eKLR (*supra*), the Court observed that:-
- 22. In exercising supervisory jurisdiction under Article 165(6) the court does not exercise appellate jurisdiction and therefore cannot review or reweigh evidence upon which the determination of the lower court is based, it can only demolish the order which it considers erroneous or without jurisdiction and which constitutes gross violation of the fair administration of justice but does not substitute its own view to those of the inferior tribunals.
20. Further, in *Veerappa Pillai V Remaan Ltd* the Supreme court of India had this to say:- “The supervisory powers is obviously intended to enable the High court use them in grave cases where the subordinate tribunal or bodies or officer acts wholly without jurisdiction or excess of it or in violation of the principles of natural justice or refuses to exercise jurisdiction vested in them or there is an apparent error on the face the record and such action, omission, error or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide and large as to enable



the High Court to convert itself into a Court of Appeal and examine for itself the correctness of the decision impugned and decide what the proper view on the order be made.....”

21. This was also the position taken by the court in the case of Reuben Mwangi Nguri v Republic 2021 eKLR where the court held:-

“The prayer of revision vested in this court under Section 362 of the Criminal Procedure Code is principally to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to regularity of any proceedings of any subordinate court. Accordingly, revision is by no means to be taken as an appeal by the aggrieved party to the High Court in criminal cases where such orders are being sought under Section 364 on revision the court should steer clear from trespassing into the realm of appellate jurisdiction.”

22. While the jurisdiction is discretionary, it must be exercised judicially taking into account the circumstances of each case.

23. The lower court record indicates that the move by the DPP to withdraw the case was primary on the basis that there is no realistic prospect of a conviction if the trial was to continue to its logical conclusion.

24. The DPP cited the case of *R vs DPP ex parte Manning* {2001}Q.B 330 and argued that since the DPP had complied with the National Prosecution Policy in his assessment of evidence and found that the case does not meet the evidential threshold test then the court should have allowed the withdrawal.

25. The applicant further urged the court to find that the move by the DPP was in line with Section 87 (a) of the Criminal Procedure Code and Article 157(6) of the Constitution.

26. The applicant also invoked the provisions of Section 5 of the Office of the Director of Public Prosecutions Act which allows the DPP to routinely review cases.

27. The applicant further urged that if the court finds that the application met the test under the law and the trial court ought to have allowed it.

28. The respondents are suppo.....

29. The interested parties are opposed to the application and have urged the court to dismiss the application.

30. In the lower court they too were opposed to the withdrawal and the filed an affidavit sworn by Tom Odhiambo Owiny on 10<sup>th</sup> July 2024.

31. In the affidavit in opposition the interested parties being the complainants were emphatic that there was adequate evidence to support the charges against the respondents and in their view the court has a duty to prevent the abuse of legal process by declining to grant orders withdrawing the matter.

32. The learned Hon Magistrate vide his ruling delivered on the 16<sup>th</sup> September 2024 declined to allow the withdrawal and in the impugned ruling he questioned the DPP’s action.

33. The learned Hon Magistrate was particularly concerned about the interests of the victim where the DPP chooses to withdraw a matter without reference to the victims.

34. The learned honorable magistrate stressed the importance of carrying the victim on board whenever decisions are taken that are prejudicial to them.



35. The trial court made reference to Section 9 of the *Victims Protection Act* which provides;-  
Section 9 of the *Victim Protection Act*, 2014 provides for the rights of a victim during the trial process as;
- (1) A victim has a right to
    - (a) be present at their trial either in person or through a representative of their choice;
    - (b) have the trial begin and conclude without unreasonable delay; (c) give their views in any plea bargaining;
    - (d) have any dispute that can be resolved by the application of law decided in a fair hearing before a competent authority or, where appropriate, another independent and impartial tribunal or body established by law; (e) be informed in advance of the evidence the prosecution and defence intend to rely on, and to have reasonable access to that evidence;
    - (f) have the assistance of an interpreter provided by the State where the victim cannot understand the language used at the trial; and
    - (g) be informed of the charge which the offender is facing in sufficient details.
  - (2) Where the personal interests of a victim have been affected, the Court shall
    - (a) permit the victim's views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court; and
    - (b) ensure that the victim's views and concerns are presented in a manner which is not
      - (i) prejudicial to the rights of the accused; or
      - (ii) inconsistent with a fair and impartial trial.
  - (3) The victim's views and concerns referred to in subsection (2) may be presented by the legal representative acting on their behalf.
36. The trial court further in declining to allow the application for withdrawal cited the case of *Msagha v Chief Justice & 7 Others* Nairobi HCMCA no. 1062 of 2004 (Lessit, Wendo & Emukule, JJ on 3/11/06) (HCK) [2006] 2 KLR 553 it was held:
- “The Court observes firstly that the rules of natural justice “audi alteram partem” hear the other party, and no man/woman may be condemned unheard are deeply rooted in the English common law and have been transplanted by reason of colonialization of the globe during the hey-days of the British Empire. An essential requirement for the performance of any judicial or quasi-judicial function is that the decision makers observe the principles of natural justice. A decision is unfair if the decision-maker deprives himself of the views of the person who will be affected by the decision”
37. This court has independently reviewed the impugned ruling and is not inclined to interfere with the same. The learned honorable magistrate in her ruling does not appear to have made an incorrect, illegal, irregular and or improper order directing that the matter proceeds to trial.
38. Counsel for the Director of Public Prosecution in their written submission before the magistrate at page 4 stated : “

“2. Whether the DPP has valid reasons to withdraw the matter under section 87



- (a) Pursuant to a holistic evaluation of the evidence in this matter, the DPP noted the following evidential shortcomings:

Even though the receipts and letters filled in court had forged signatures of the Complainants, the intention to defraud or deceive, or induce a course of action is missing. The charge of forgery contrary to section 349 of the Penal Code can therefore not stand.

The offence of perjury as charges does not meet the evidential threshold there are no court proceedings provided and also no witness from the ELC has recorded a statement to confirm that the accused was a sworn witness who gave false testimony in court.

The DPP noted the following with regards to public interest in the matter herein, that the parties herein were involved in a commercial transaction and are using the criminal process to settle that civil dispute specifically Criminal Case No. 1953 of 2020 and thus parties were abusing the legal process.

Moreover the matter herein has no monetary claim made by either of the 3 parties whose signatures were forged, i.e. Tom Owiny, Amsa Jerotich and Hezbon Omondi.”

39. The excerpt above clearly indicates that the DPP acknowledges that there was forgery of the signatures of the complainants. It cannot therefore be that the cure for failure by the drafter of the charge sheet to include a monetary value is the withdrawal of a case such as this.

40. Counsel for the applicant knows better than anyone else that such an omission in charge sheet is curable by way of amendment of the charge by dint of the provisions of Section 214 of the Criminal Procedure Code which states:-

Variance between charge and evidence, and amendment of charge

- (1) Where, at any stage of a trial before the close of the case for the prosecution, it appears to the court that the charge is defective, either in substance or in form, the court may make such order for the alteration of the charge, either by way of amendment of the charge or by the substitution or addition of a new charge, as the court thinks necessary to meet the circumstances of the case: Provided that—
  - (i) where a charge is so altered, the court shall thereupon call upon the accused person to plead to the altered charge;
  - (ii) where a charge is altered under this subsection the accused may demand that the witnesses or any of them be recalled and give their evidence afresh or be further cross-examined by the accused or his advocate, and, in the last-mentioned event, the prosecution shall have the right to re-examine the witness on matters arising out of further cross-examination.
- (2) Variance between the charge and the evidence adduced in support of it with respect to the time at which the alleged offence was committed is not material and the charge need not be amended



for the variance if it is proved that the proceedings were in fact instituted within the time (if any) limited by law for the institution thereof.

- (3) Where an alteration of a charge is made under subsection (1) and there is a variance between the charge and the evidence as described in subsection (2), the court shall, if it is of the opinion that the accused has been thereby misled or deceived, adjourn the trial for such period as may be reasonably necessary.
41. It is therefore clear for a reading of this Section that if indeed the concern of the DPP is that monetary value is not indicated in the charge sheet that cannot be a ground for withdrawal of charges but rather a ground for an application under Section 214 of the *Criminal Procedure Code*.
42. The DPP has a duty under Article 157 (11) to prevent the abuse of the legal process and to protect the Public interest. In the spirit of that Article the prosecution must ensure that where an investigation has been conducted and evidence is gathered that points to the commission of a crime, the proper charges are laid before court and the responsible persons prosecuted fairly. In doing so, the DPP is enjoined to ensure that the victim's interests and concerns are taken into account and protected throughout the trial. See *Waswa V Republic* 23 of 2019 [2020] KESC 23 (KLR) (4 September 2020) (Judgment).
43. Victims of a crime and the society as a whole have a legitimate expectation that persons who are found culpable by investigators are brought before the courts and prosecuted through a fair and a transparent process that respects the provisions of Article 50 of the Constitution. The scales of justice must be evenly balanced so as to protect innocent persons from unfair prosecution while at the same time ensuring that victims of a crime receive justice before the courts.
44. In light of the above this court that the decision by the learned honorable magistrate declining to allow the withdrawal of the criminal case is sound in law and that there is nothing irregular, illegal, incorrect or inappropriate to justify intervention by this court. Accordingly, the application by the application is hereby dismissed, the lower court file shall be immediately transmitted to the trial court for the purposes of the matter proceeding to its logical conclusion.
45. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17<sup>TH</sup> DAY OF SEPTEMBER 2025**

**A. M. MUTETI**

**JUDGE**

In the presence of:

Court Assistant: Kiptoo

Ms Dela holding brief Ogega for the DPP

Wanyanga for the Respondent

