



**Republic v Adede (Criminal Revision E104 of 2025)
[2025] KEHC 14662 (KLR) (21 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14662 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL REVISION E104 OF 2025
DK KEMEL, J
OCTOBER 21, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

DAVID ODUOR ADEDE RESPONDENT

RULING

1. Learned counsel for the Prosecution vide a letter dated 8/7/2025 has sought for revisionary orders in respect to Siaya CM’s Court Criminal Case No. E522/2024 - Republic versus David Oduor Adede. The Applicant’s complaint is that the learned trial magistrate (Hon. B. Limo PM) acquitted the accused in that matter under Section 202 of the Criminal Procedure Code on 28/5/2025 extensively on the ground that the witnesses failed to turn up in court. Further, the Applicant contends that the acquittal aforesaid has caused great prejudice to the Complainant in the matter. It was therefore urged that this court exercises its revisionary powers to review the trial court’s decision in setting aside and direct that the matter be heard and determined on merit.
2. I have considered the Applicant’s request for revision. Revisionary power of the High Court is granted is donated to the High Court under Article 165 (6) and (7) of *the Constitution* which provides as follows:
 - (6) The High Court has supervisory jurisdiction over the subordinate courts and over every person, body or authority exercising a judicial or quasi -judicial function but not 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 or authority referred to in clause (6) and may make orders or give any direction it considers appropriate to ensure the fair administration of justice.



Revisionary power is also donated to the High Court under Section 362 and 364 of the Criminal Procedure Code which are as follows:

362 (1) 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.

364 (1) – 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 a case of any of the powers conferred on it as a court of a court of Appeal by Section 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.
- c. In proceedings under Section 203 or 296 (2) of the Penal Code the *Prevention of Terrorism Act*, the Narcotic Drug and Psychotropic Substances (Control) Act, the prevention of Organized Crimes Act, the Proceeds of Crime and Anti Money Laundering Act, the *Sexual Offences Act* and the Counter - Trafficking in Persons Act, where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.

(2) No order under this Section shall be made to the prejudice of an accused person unless he had had an opportunity to 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 the 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 proceedings by way of revision shall be entertained at the instance of the party who could have appealed.

3. Being guided by the above provisions, it is necessary to reproduce the proceedings of the lower court which are now called into question. The accused in that matter David Oduor Adede had been charged with an offence of destroying crops of cultivated produce contrary to Section 334 (a) of the Penal Code. The particulars were that on 30/6/2024 at around 1000 hrs at Agoro Lieye village in Bar Agulu Sub Location within Siaya County jointly with others already charged before court willfully and unlawfully ploughed down cultivated produce namely maize, cassava and beans valued at Kshs863,100/= the



property of Emmah Anyango Owoko. The accused pleaded not guilty and was released on a bond of Ksh300,000/= plus one surety of similar amount or an alternative cash bail of ksh50,000. The matter was fixed for hearing on 27/11/2024. On the 27/11/2024 the prosecution indicated to the court that they had witnesses but requested to have the case consolidated with Criminal No. E487 of 2024 and which the accused did not object and hence the matter was fixed for consolidation on 17/1/2025. It seems the matter was not called out on 17/1/2025 but the record shows that the matter was mentioned on 26/2/2025 but again the matter was rescheduled to 26/3/2025. However, the prosecution informed the court that criminal case No. E487/2024 had been resolved and therefore there was no need for consolidation and thus the matter was fixed for hearing on 28/5/2025. When the matter came up on 28/5/2025, the learned counsel Mr. Sigoma for the accused indicated that he was ready to proceed while the prosecutor Mr. Mocha informed the court that he had no witnesses in court. The court on its own motion (suo moto) made the following order:

Court

“The defence is ready to proceed. We have no witnesses in court. Because of absence of complainant in court, the court is constrained to acquit under the provisions of Section 202 to acquit the accused.

File closed.

Bail be refunded to the depositor.”

5. It is from the foregoing order of the learned trial magistrate that the Applicant was aggrieved and lodged the present revision.
6. I have considered the revision aforesaid together with record and the provisions of *the Constitution* and Criminal Procedure Code. The issue for determination is whether the revision application has merit.
7. it is noted that the Respondent had been charged with an offence of destroying crops of cultivated produce contrary to Section 334 (a) of the Penal Code. The matter was duly fixed for hearing but the same did not proceed because the prosecution at some stage sought for consolidation of the case with another one (CRC No. E087/2024) and thus the matter was mentioned severally and later the prosecution informed the court that the case which was set to be consolidated with the present one had been resolved and thus the matter was fixed for hearing on 28/5/2025. It turned out that witnesses were not present. The prosecution did not seek for an adjournment and neither did the defence seek for an acquittal of the accused for absence of the complainant. It was the court's own suo moto decision which acquitted the accused under Section 202 of the Criminal Procedure Code. Indeed, a trial court has discretion to acquit an accused person if the Complainant fails to turn up in court on the day of the hearing. It is noted that the description of the word “Complainant” connotes the individual aggrieved/wronged or the Republic. The prosecution of a complaint is usually carried out by a prosecutor on behalf of the Republic. Hence, if a prosecutor is present in court then it cannot be said that the complainant is not there. The ODPP while filing the complaint herein did annex a letter dated 9/6/2025 from a firm of Lawyers namely Jesse David Ochanyo & Kurgat Advocates complaining to the ODPP Siaya wherein it complaint about the acquittal of the accused by the trial court because the complainant was absent as she was then absent due to sickness and was being attended to at Ashburn Community Nursing Home. The learned counsels urged the ODPP to file for the review of the matter on behalf of the complainant and seek for the case to be re-opened for purposes of hearing and proper determination.
8. It is noted that the matter was coming up for hearing on 28/5/2025 for the first time and therefore the case had not been unduly adjourned to the prejudice of the accused. Indeed, the accused was



already out on bail and therefore did not suffer any inconvenience. Further, the prosecution had not even been granted a last adjournment so as to entitle the court to dismiss the charge due to absence of witnesses. It was therefore erroneous for the trial court to terminate the matter summarily in that manner without according the prosecution and the complainant another date to present their case failing which the court could then proceed to terminate it. Hence, the grievances raised by the complainant were legitimate. In any event, the record shows that the witnesses were present when the matter came up for hearing for the first time on 27/11/2024 when the matter was adjourned due to the need for consolidation. It is highly likely that the witnesses might have been under the impression that the consolidation had not been sorted. There is therefore evidence that the complainant and her witnesses were willing to attend court and testify if they were advised accordingly. Due to the need to do justice for the parties, the interest of justice requires that the orders of the trial court to be reviewed so that the matter can be determined on merit.

9. In view of the foregoing observations, it is my finding that the Applicant's revision request dated 8/7/2025 has merit. The same is allowed. The order made by the learned trial magistrate dated 28/5/2025 acquitting the Respondent under Section 202 of the Criminal Procedure Code is hereby set aside and substituted with an order reinstating the case for hearing and final determination.

DATED AND DELIVERED AT SIAYA THIS 21ST DAY OF OCTOBER 2025.

D. KEMEI

JUDGE

In the presence of:

Soita.....for Applicant

N/A David Oduor Adede..... Respondent

N/A Ochanyo.....tching brief for Complainant

Kimaiyo/Maureen.....Court Assistant

