



**Republic v Rono (Criminal Revision E001 of 2025)
[2025] KEHC 13685 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13685 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL REVISION E001 OF 2025
RB NGETICH, J
OCTOBER 2, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

EDWARD KIPKORIR RONO RESPONDENT

RULING

1. The Respondent was charged with the offence of grievous harm contrary to Section 234 of the Penal Code. He took plea on 3rd January 2023 and pleaded not guilty.
2. Two of the four prosecution witnesses testified. On 1st October 2024, the trial court dismissed the charges and acquitted the accused under Section 210, citing failure by the prosecution to proceed.
3. The Director of Public Prosecutions (DPP) thereafter moved this Court through a letter dated 3rd February 2025, challenging the ruling of Hon. Richard Koech, Senior Principal Magistrate, delivered on 6th November 2024. The DPP contends that the acquittal was improper as the prosecution had not closed its case and the dismissal undermined the complainant’s rights.

Applicant’s Case

4. The DPP argues that the trial court erred in law by invoking Section 210 of the Penal Code—which relates to infanticide—instead of Section 210 of the Criminal Procedure Code (CPC).
5. It is submitted that Section 210 CPC applies only at the close of the prosecution case. Since only two witnesses had testified and the prosecution had not closed its case, the acquittal was premature.
6. Reliance was placed on Republic v. Collenius Miheso (Criminal Revision No. 177 of 2020) and DPP v. Peruy Mansukh Kansagara & 8 Others (Naivasha HCCR Revision No. 4 of 2020), urging this Court to set aside the acquittal and order the case to proceed to conclusion in the interests of justice and public confidence.



Respondent's Submissions

7. The Respondent submits that the prosecution had been granted several adjournments but failed to avail witnesses despite summons being issued. The trial magistrate, considering the Respondent's advanced age of 75 years, ill health, and prolonged pendency of the case, exercised discretion to acquit.
8. It is further argued that Section 364(1)(b) CPC bars revision of an acquittal, and the proper remedy available to the prosecution was an appeal under Section 348A CPC.
9. According to the Respondent, the acquittal was lawful, and the miscitation of the section was a curable slip. The Court was urged to dismiss the request.

Determination

10. The issue for determination is whether this Court can, in exercise of its revisional jurisdiction under Sections 362–364 CPC, revise an order of acquittal.
11. Section 362 CPC empowers the High Court to examine the record of a subordinate court to satisfy itself as to the legality, propriety, or regularity of proceedings. However, Section 364(1)(b) expressly excludes orders of acquittal from revision.
12. In *Bichange v. R* [2005] 2 KLR 4, the Court of Appeal held that revision cannot be used to convert an acquittal into a conviction. Similarly, in *DPP v. Gilbert M'ringera Kiungu* [2018] eKLR, the High Court emphasized that an acquittal may only be challenged through appeal under Section 348A CPC.
13. I agree with this position. The High Court's revisional powers, though wide, are not unlimited. An acquittal is given special protection under the CPC to safeguard an accused against double jeopardy and to preserve finality in criminal proceedings, unless overturned on appeal.
14. While the DPP has raised concerns regarding the complainant's rights and the erroneous citation, such matters must be ventilated in appellate proceedings. This Court cannot, in revision, reopen the case or order a retrial without contravening Section 364(4) CPC. The appropriate recourse lies in an appeal under Section 348A CPC.

Final Orders:-

15. In the circumstances, I find no basis to interfere with the trial court's order. Accordingly:
 - a) The application for revision is dismissed.
 - b) The applicant is at liberty to file an appeal against the trial court's order of 6th November 2024 under Section 348A CPC.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 2ND DAY OF OCTOBER, 2025.

.....

RACHEL NGETICH

JUDGE

In the presence of:

Ms. Omari for State.

Respondent Absent.



CA, Elvis.

