



**Republic v Kalori (Criminal Revision E045 of 2025)
[2025] KEHC 15477 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15477 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL REVISION E045 OF 2025
DKN MAGARE, J
OCTOBER 23, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

SYLVIA ABWOGA KALORI RESPONDENT

RULING

1. The matter came up for hearing this morning. The Respondent indicated that she has seen the children 3 times this year. I have perused the report from the Children’s Officer. The children are in dire need of care and protection. The Respondent can do nothing other than smile in court.
2. I note the agreement was entered before the two parties who are said to be parents. The matter was criminal in nature. The right of the director of criminal prosecution in criminal matters is sacrosanct under Article 157. The prosecutor opposed the agreement but was overruled. The court had no such powers.
3. Without the concurrence of the ODPP, an agreement to terminate criminal proceedings is null and void. Lord Denning MR as he then was while delivering the opinion of the Privy Council in the case of *Macfoy vs. United Africa Co. Ltd* [1961] 3 All E.R. 1169 at page 1172 (1) said;

If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”
4. The agreement is null and void. It is even not necessary to deal with the prerequisites of Article 53(3) of *the Constitution*. The agreement remained parental responsibility from the Respondent. It is contra bonos mores. It cannot stand and must fall as a domino.



5. It appears that the respondent is engaged in skullduggery in order to obfuscate the rights of the children. Consequently, I find the proceedings of 19/12/2024 null and void. It is set aside.
6. The matter shall therefore proceed for hearing of CR 749 of 2024. The Respondent shall be arrested forthwith and remanded in prison custody pending appearance in court.
7. Mention the criminal file in a court other than Hon. A. Ndung'u. The matter must proceed to its logical conclusion. Mention before the Chief Magistrate on 6/11/2025.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 23RD DAY OF OCTOBER, 2025. EX TEMPORE RULING DELIVERED PHYSICALLY IN OPEN COURT.

KIZITO MAGARE

JUDGE

In the presence of: -

Mr. Kimani for the State

Respondent present

Court Assistant – Michael

