



REPUBLIC OF KENYA



**Mokaya & another v Republic (Criminal Revision E121 of 2025)
[2025] KEHC 18627 (KLR) (15 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18627 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION E121 OF 2025
DR KAVEDZA, J
DECEMBER 15, 2025**

BETWEEN

ANTHONY MOSIOMA MOKAYA 1ST APPLICANT

DANCUN OGWAYA MOKAYA 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicants moved this court by a notice of motion seeking the exercise of this court's revisionary jurisdiction in respect of orders made in Dagoretti Principal Magistrate's Court Criminal Case No. MCCR E196 of 2025. They are charged with the offence of burglary and pleaded not guilty. The prosecution called two witnesses whose testimony was concluded on 28th July 2025.
2. During cross examination, issues arose regarding the absence of photographs, receipts, and a valuation report relating to the alleged stolen items. At the close of the testimony of the two witnesses, the prosecution sought and was granted leave to introduce additional documents. The defence objected, but the trial court ruled that the defence would have an opportunity to cross examine, noting that a company witness had not yet testified.
3. Subsequently, on 22nd October 2025, the defence was served with a valuation report and a witness statement by one Justus Wakahu. The statement expressly responded to matters raised during cross examination of PW1 and PW2 and indicated support for PW2. The defence objected to the admission of this evidence on the ground that it went beyond the scope of the leave earlier granted and amounted to an attempt to fill gaps exposed during cross examination.
4. By a ruling delivered on 28th October 2025, the trial court overruled the objection and allowed the new evidence to be adduced. The applicants contend that this decision occasioned grave prejudice and violated their right to a fair trial under Article 50 of *the Constitution*.



5. This court's power of revision is anchored in sections 362 and 364 of the Criminal Procedure Code. The purpose of that jurisdiction is to ensure the legality, propriety, and regularity of proceedings before subordinate courts. While a trial court retains discretion to allow further evidence, such discretion must be exercised sparingly and in a manner that does not occasion unfair advantage or prejudice.
6. I have carefully considered the application and examined the record of the trial court in exercise of this court's revisionary jurisdiction. The applicants contend that the ruling delivered on 28th October 2025, allowing the prosecution to adduce further evidence, was irregular and prejudicial to their right to a fair trial.
7. From the record, it is evident that the trial court granted the prosecution leave to introduce additional evidence and expressly preserved the applicants' right to challenge that evidence through cross examination. The applicants have not demonstrated that the admission of the impugned evidence has occasioned any irreparable prejudice or denied them an opportunity to test its probative value. The mere fact that the evidence was introduced after cross examination of earlier witnesses does not, of itself, render the proceedings unfair.
8. The admission of further evidence mid trial lies within the discretion of the trial court. Such discretion must be exercised judiciously, but an appellate or revision court will not interfere unless it is shown that the discretion was exercised capriciously, on wrong principles, or in a manner that occasioned a miscarriage of justice. No such impropriety has been demonstrated in the present case.
9. The record discloses that the trial court considered the objections raised by the defence and rendered a reasoned ruling. The applicants remain at liberty to challenge the credibility, relevance, and weight of the additional evidence through cross examination and in their final submissions. In those circumstances, the safeguards of a fair trial under Article 50 of *the Constitution* remain intact.
10. I am therefore not satisfied that the decision of the trial court was illegal, improper, or irregular, or that it calls for the intervention of this court in revision.
11. Accordingly, the application dated 6th November 2025 is found to be lacking in merit and is dismissed. Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 15TH DAY OF DECEMBER 2025

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D. KAVEDZA

JUDGE

In the presence of:

Mr. Richu for the Applicant

Mr. Mutuma for the Respondent

Karimi Court Assistant.

