



**Kamau v State Law Office (Criminal Miscellaneous Application
E044 of 2025) [2025] KEHC 19193 (KLR) (30 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 19193 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL MISCELLANEOUS APPLICATION E044 OF 2025**

**SM GITHINJI, J
DECEMBER 30, 2025**

BETWEEN

BRIAN MWAURA KAMAU APPLICANT

AND

STATE LAW OFFICE RESPONDENT

RULING

1. . Brian Mwaura Kamau is facing in the lower court a main charge of defilement, Contrary to Section 8(1) as read with Section 8(4) of the [Sexual Offences Act](#) No. 3 of 2006.
2. . The particulars of this offence are that on the 23rd day of August 2024 at Manga area in Imenti North Sub -County within Meru County the accused intentionally and unlawfully caused his penis to penetrate the vagina of Y.N a child aged 16 years.
3. . In the alternative, the accused/applicant faces a charge of committing an indecent act with a child, Contrary to Section 11(1) of the [Sexual Offences Act](#).
4. . In this matter, the prosecution called 6 witnesses and closed their case on 26th February, 2025 where the court found that the accused had a case to answer on both counts. The accused prayed for a month to think.
5. . On 2/4/2025 Ms Gachohi appeared and stated that she was holding brief for Mr. Otieno who had just been appointed to represent the accused. The matter was adjourned to 14/5/2025.
6. . On 14/5/2025 Mr. Otieno C appeared. He stated he had just been appointed as defence. The application was allowed and the matter placed for hearing on 18/6/2025.
7. . On 18/6/2025 Mr. Otieno C Said he was not ready to proceed. He stated that he had asked for typed proceedings to prepare as he had not participated in the hearing. Adjournment was granted and matter placed for mention on 7/7/2025.



8. . On 7/7/2025 defence had been supplied with typed proceedings and requested for a hearing date. Defence hearing was placed for 23/7/2025.
9. . On 23/7/2025 Mr. Kiruai held brief for Mr. Otieno C. He indicated that Mr. Otieno C was ready to proceed and requested for time allocation. The court indicated matter was to proceed at 11.00 a.m.
10. . At 11.00 a.m, Mr. Otieno C indicated he had just met his client and he did not have proper instructions. He indicated he was not ready to proceed. He prayed for an adjournment. The court granted an adjournment to 6/10/2025.
11. . On 6/10/2025, Mr. Kaimenyi held brief for Mr. Otieno C. He indicated Mr. Otieno C was ready to proceed. However, it appeared the accused had not been produced. Order for his production was made and hearing date given for 13/10/2025.
12. . On 13/10/2025 Mr. Ngeera held brief for Mr. Otieno C. He made an application under Article 50 of [*the Constitution*](#) to re-open the prosecution case for cross-examination of the witnesses by Mr. Otieno C. He indicated that they had been supplied with typed proceedings and had noted it's fair to re-open the case as the accused had proceeded without a counsel.
13. . The prosecutor prayed for a few minutes adjournment which was granted. Later when the matter was called Mr. Ngeera stated he had realized the court could not re-open the prosecution case and prayed for a last adjournment for defence hearing. The defence was granted a last adjournment and the matter placed for defense hearing on 3/11/2025.
14. . On 4/11/2025 Mr. Otieno C filed an application to this court under certificate of urgency, praying that the court stays the lower court proceedings in case No. E055 of 2024 and that the court be pleased to review order/direction issued by Hon M. Nyigei on 13th October, 2025 and the accused person be allowed to recall the prosecution witnesses for cross-examination. I gave direction on the application on 11/11/2025 and placed the matter for mention for further direction on 15/12/2025.
15. . On 15/12/2025, Mr. Mutunga held brief for Mr. Otieno C. The respondents and parties were directed to file submissions within 7 days.
16. . I have noted in the lower court the matter had been further mentioned on 3/11/2025 where Mr. Ngeera held brief for Mr. Otieno C. He indicated Mr. Otieno C had 2 witnesses and would be able to proceed at 11.00 a.m. Later Mr. Otieno C appeared and stated he tried to get full instructions from the accused but in vain. He alleged they were not in good terms. He withdrew his representation. Accused prayed for time to proceed with his defence. The matter was placed for defence hearing on 10/11/2025.
17. . On 10/11/2025 the accused appears in court and told the court that they filed an application in the high court. He prayed for a date to allow the application be heard.
18. . The court called for Mr. Otieno C who later appeared and said that he ceased acting for the accused after he had filed the application in the high court.
19. . From the foregoing, the issues for determination are:-
 1. Whether this court can review or revise an issue that was abandoned and never determined by the trial court, and
 2. Whether the present application is properly before the Court.



20. The jurisdiction of this court in revision is supervisory and corrective. It is involved to satisfy the court as to the correctness, legality, or propriety of any finding, sentence or order recorded by a subordinate court, or as to the regularity of proceedings.
21. In the present case, the alleged application for recall of witnesses was abandoned by the applicant in the subordinate court. There was therefore no judicial determination made. In absence of a decision, order or finding, there is nothing for this court to review, revise, or interfere with.
22. Courts do not act in vain, nor do they exercise jurisdiction in abstract or
23. Further, the applicant's advocate having ceased acting, and the application herein remained unprosecuted, this court finds that the applicant has not demonstrated diligence or seriousness in pursuing the relief sought.
24. While the right to fair trial is fundamental and non-derogable, it must be asserted timeously and within the framework of orderly judicial process. A party who abandons an application before the trial court cannot later seek this court's intervention on this basis of that abandoned application without demonstrating exceptional circumstances.
25. In view of the foregoing, I find the application incompetent, there being no decision of the subordinate court capable of review or revision; and in that the application has not been prosecuted and stands abandoned.
26. Accordingly, the application is dismissed. The orders of 11th November, 2025 are vacated. Matter be mentioned on 12/1/2026 for further hearing directions.

STEPHEN M. GITHINJI

JUDGE

30/12/2025

In the presence of:

The Applicant

Ms Adhi – respondent (ODPP)

