



**Muchane v Republic (Criminal Revision E209 of 2025)
[2026] KEHC 1338 (KLR) (6 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1338 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL REVISION E209 OF 2025
A MSHILA, J
FEBRUARY 6, 2026**

BETWEEN

NDUNGU KAGWE MUCHANE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. A brief outline of the case was that the Applicant Ndungu Kagwe Muchane was charged with the offence of Sexual Assault contrary to Section 5(1)(a)(ii)(2) of the [Sexual Offences Act](#).
2. The Applicant had an alternative count of Committing an Indecent Act with a child contrary to Section 11(1) of the [Sexual Offences Act](#).
3. On the 16/09/2024 the Office of the Director of Public Prosecution addressed a letter to the trial court with a recommendation for the withdrawal of the criminal case Kikuyu Chief Magistrates Court Criminal Case No.E016 of 2024;
4. The trial court rendered its Ruling on 1/04/2025 declining the application for withdrawal. Being aggrieved by the Ruling of the trial court the Applicant filed this instant application seeking revision of the said Ruling on the grounds that the trial court erred by calling for and admitting extrinsic matters which the Applicant contends occasioned gross miscarriage of justice and exhibited want of impartiality which greatly prejudiced the Applicant;
5. At the hearing hereof the Applicant was represented by Learned Counsel Mr. Wandugi and relied on the written submissions whereas the Respondent being the State was also represented by Mr.Gacharia who chose not to oppose the application and made no submissions in opposition. Hereunder is the Applicants submissions.



Applicant's Case

6. The application is for review of the Ruling dated 1/04/2024 under the provisions of Section 362 and 367 of the Criminal Procedure Code and all enabling provisions of the law.
7. In his submissions the Applicant stated that he was the accused and averred that in the course of the proceedings the trial court was presented with a letter from the ODPP Kiambu recommending the withdrawal of the case. The recommendation by the ODPP was anchored on the authority of the ODPP stipulated under Article 157 of *the Constitution*. The ODPP's letter had given sufficient justification for the recommendation to which the Applicant contends the trial court wrongfully held otherwise. The Applicant urged this Court to call for the record for examination and urged the Court to review and set aside the wrongful Order.

Respondent's Case

8. The application was not opposed by the Respondent.

Issues For Determination

9. After hearing the submissions this court has framed the following issues for determination which are as follows;
 - i. Whether in the circumstances of the case the trial court erred in declining the recommendation for withdrawal.
 - ii. Whether this is a suitable case for revision;

Analysis

Whether in the circumstances of the case the trial court erred in declining the recommendation for withdrawal;

10. The scope of this court's revisionary powers are that it can call for and examine the record of criminal proceedings of a subordinate court so as to satisfy itself as to the propriety and legality of the decision and that it has been made in accordance with the law; the applicable section for revision in this instance is found at Section 364 which reads as follows;

“

- “(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 any of the powers conferred on it as a Court of Appeal by Sections 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.
- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of 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 this 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 proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”

11. Upon perusal of the court record this court notes that the Applicant had been charged with the offence of Sexual Assault contrary to Section 5(1)(a)(ii)(2) of the *Sexual Offences Act*. The Applicant also had an alternative count of Committing an Indecent Act with a child contrary to Section 11(1) of the *Sexual Offences Act*.
12. Article 157 of *the Constitution* 2010 vests in the Office of the Director of Public Prosecution exclusive authority to institute take over continue or discontinue criminal proceedings; This prosecutorial discretion is protected by *the Constitution* and the courts should always be slow and should only interfere with this discretion if it can be demonstrated that the decision was unconstitutional, irrational or tainted by bad faith.
13. In this instance a material fact was brought to the attention of the trial court that the criminal proceedings were maliciously instituted to exert pressure in a pending Milimani Children’s Case Number E038 of 2024; This Court concurs with the Applicant’s submissions that the record speaks for itself and that it clearly reflects that the trial court overlooked material factors and failed to consider and interrogate the question of malice and ulterior motive before rendering its decision; this then renders both the proceedings and the impugned Ruling as being procedurally flawed.
14. In the circumstances this Court is satisfied that there was impropriety or impartiality by the trial court in rejecting the withdrawal and that there are good reasons found that justifies interference with the decision and in such instances the law permits this court to alter or reverse the order;
15. In the light of the forgoing this court is satisfied that this is a suitable case for it to exercise its supervisory powers of revision by the setting aside the order of 1/04/20245 and allowing the ODPP’s application to withdraw the case;

Findings And Determination

16. For the foregoing reasons this court makes the following findings and determinations;
 - i. This Court finds and it is satisfied that this is a suitable case for it to exercise its supervisory powers of revision conferred under the provisions of Section 364 (1)(b) of the Criminal Procedure Code;
 - ii. The Order made on 1/04/ 2025 is hereby set aside
 - iii. The file be remitted back to the trial court and a copy of this Ruling to be placed before the trial court for entering of a Nolle Prosequi.



Orders accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 6TH DAY OF FEBRUARY, 2026.

A. MSHILA

JUDGE

In the presence of;

Wandugi – for the Applicant

Gacharia – for the Respondent

Karani – watching brief –for the Complainant

