

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KIBERA**  
**CRIMINAL REVISION NO. E002 OF 2026**

YUSUF RASHID.....APPLICANT

VERSUS

REPUBLIC.....RESPONDE  
NT

**RULING**

1. The Applicant, an accused person before the trial court in Criminal Case No. E1365 of 2024; Republic v. Rashid Yusuf where he faces a charge of stealing contrary to section 268 as read with section 275 of the Penal Code. By a Notice of Motion dated 8<sup>th</sup> January 2026, he seeks revision of the trial court's ruling delivered on 9<sup>th</sup> December 2025 putting the applicant on his defence and substitute it with a no case to answer, and accordingly acquit him.
2. The Application is supported by an Affidavit sworn by the Applicant on the same date. He avers that the Prosecution called five witnesses in an attempt to establish a case to answer in respect of the charges facing him and that, by a finding of the Chief Magistrate's Court delivered on 9<sup>th</sup> December 2025, he was placed on his defence without any reasons being given. The Applicant contends that, having been present throughout the proceedings, the Prosecution failed to adduce any evidence sufficient to establish a prima facie case against him, none of the witnesses having placed him at the scene of crime and none being able to identify him in the CCTV footage or photographs relied upon.
3. He further avers that it is difficult to comprehend what the trial court relied upon in placing him on his defence, particularly as the

evidence disclosed that P.W.1 confirmed he was not the owner of the allegedly stolen metal plates and therefore had no proprietary interest therein, while the alleged owner neither recorded a statement nor testified. No valuation report was produced to support the alleged value of the items and P.W.1 could not identify the Applicant in the images relied upon, attributing the CCTV extraction to one "Francis", who neither recorded a statement nor testified. P.W.2, on the other hand, testified that he, and not Francis, owned the CCTV system and likewise could not identify the Applicant. P.W.3, a forensic expert, admitted she could not identify any individual in the footage or determine who was depicted moving therein. The Investigating Officer, P.W.4, admitted that although three male persons appeared in the footage, he could not identify the Applicant, could not establish ownership of the metal plates, and had seen no documentation proving ownership.

4. He further admitted that the Applicant was arrested on 21<sup>st</sup> June 2024 but presented in court on 25<sup>th</sup> June 2024 outside the constitutional period, that he did not record the Applicant's statement, did not establish whether the CCTV belonged to Francis or P.W.2, and that no security guards recorded statements to corroborate the complaint. P.W.5, the arresting officer, similarly admitted he could not identify the Applicant in the footage, did not verify ownership of the alleged exhibits, and arrested the Applicant largely on the basis of identification by P.W.1.
5. The Applicant therefore contends that the trial court ought to have given reasons demonstrating how a prima facie case had been established. He expresses apprehension that the absence of reasons suggests the court had already formed a view adverse to

him, thereby undermining the fairness of the trial. He depones, on advice of counsel, that the legal threshold for placing an accused person on his defence was not met and that this Court is empowered under section 364(1)(b) of the Criminal Procedure Code to revise or set aside an order of a subordinate court where illegality, impropriety, or a miscarriage of justice is apparent. He urged the court to grant the orders sought.

6. The application was canvassed by way of written submissions which have been duly considered and there is no need to rehash them. The High Court's power of revision is set out in Article 165 (6) and (7) which provides: -

**(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but over a superior court.**

**(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.**

7. Section 362 of the Criminal Procedure Code provides: -

**The High Court may call and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate court.**

8. The revisionary jurisdiction of the High Court was discussed by Odunga J in a persuasive decision of **Joseph Nduvi Mbuvi vs Republic [2019] eKLR**: -

*“In my considered view, the object of the revisional jurisdiction of the High Court is to enable the high Court in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court’s revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well.”*

9. The foregoing provisions vest this Court with revisionary jurisdiction over orders of subordinate courts. This Court is therefore properly seized of the authority to entertain the present application. In proceedings of this nature, the burden rests upon the Applicant to demonstrate that the trial court acted illegally, improperly, irregularly, or upon a misapprehension of the law or facts in arriving at the impugned decision.
10. In the present matter, at the close of the Prosecution’s case the learned trial magistrate found that the Prosecution had established a case to answer and accordingly placed the

Applicant on his defence. That finding did not determine guilt but merely signified that the evidence on record disclosed matters requiring an answer from the defence. By so doing, the trial court afforded the Applicant an opportunity to be heard, which forms an integral component of the right to a fair trial guaranteed under Article 50 of the Constitution.

11. A criminal trial is a continuous judicial process which must run its course to its lawful conclusion. An accused person cannot properly disengage from the process at an intermediate stage merely because the court has found a case to answer. The obligation placed upon the Applicant is to present his defence so that the trial court may evaluate the totality of the evidence before rendering its final determination. In placing the Applicant on his defence, the learned magistrate acted within the confines of the law and followed the prescribed procedure, thereby safeguarding rather than undermining the fairness of the trial.
12. At the stage of determining whether a case to answer has been made out, the trial court is not required to render a detailed evaluation of the evidence or give elaborate reasons, as such analysis may risk pre-judging issues reserved for the final judgment after the defence is heard. The Applicant therefore has no legal entitlement to insist upon extensive reasoning at that interlocutory stage. His proper recourse lies in tendering his defence and, if necessary, challenging the final decision through the appellate process.
13. In the premises, the Applicant has not demonstrated any illegality, impropriety, irregularity, or miscarriage of justice that would justify this Court's intervention in exercise of its revisionary

jurisdiction. The application dated 8<sup>th</sup> January 2026 is lacking in merit and is hereby dismissed.

Orders accordingly.

**Ruling dated and delivered virtually this 24<sup>th</sup> day of  
February 2026**

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**D. KAVEDZA  
JUDGE**

**In the presence of:**

Mr. Ngaira for the Applicant

Mr. Karanja for the Respondent

Karimi Court Assistant.

ORIGINAL