

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**HIGH COURT CRIMINAL REVISION CASE NO. E029 OF 2022**

**REPULIC.....APPLICANT**

**-VERSUS-**

**FRANCIS NDUNGU NGUNI.....RESPONDENT**

**JUDGEMENT**

1. The Office of the Director of Public Prosecutions (ODPP) filed application for revision dated **31<sup>st</sup> March 2022** seeking that the High Court exercise its Supervisory Jurisdiction over the Subordinate Court particularly in respect of **Nyeri CMCC No. E2955 of 2021**. The Applicant prayed:-

**“1. THAT the orders of the Honourable Magistrate delivered on 24<sup>th</sup> March 2022 by Honourable Ms. Faith K. Muguongo Senior Resident Magistrate acquitting the Accused person under Section 202 of the Criminal Procedure Code Cap 75 Laws of Kenya be revised. The Applicant also sought for costs of the application.”**

2. The Respondent **FRANCIS NDUNGU NGUNI** opposed the application for revision through the Replying Affidavit dated **11<sup>th</sup> October 2024**. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated **27<sup>th</sup> December 2024** whilst the Respondent did not file any submissions.
3. The background of this matter is that on **14<sup>th</sup> December 2021**, the Respondent was arraigned before the Magistrates Court on a charge of **ASSAULT CAUSING ACTUAL BODILY HARM**. Plea was taken and hearing was to proceed on **24<sup>th</sup> March 2022**.
4. On the hearing date the accused was in court. However the complainant (victim) who was said to have been issued with a bond to attend court was not present. The prosecution sought an adjournment on the basis that the police file was not available. The trial magistrate declined to grant an adjournment and proceeded to acquit the accused under **Section 202** of the **Criminal Procedure Code**. The **ODPP** prays that this decision be reviewed.

5. The Power of the High Court to review sentences is set out in **Section 362** of the **Penal Code, Cap, 63 Laws of Kenya** which provides as follows:-

**“The High Court may call for 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 in any such subordinate court.”**

6. The orders which the High Court may make upon revision are provided by **Section 364** of the **Penal Code**.

7. The actions which a trial court may take in situations where a complainant fails to attend court are set out in **Section 202** of the **Criminal Procedure Code** as follows:-

***“If, in a case which a subordinate court has jurisdiction to hear and determine, the accused person appears in obedience to the summons served upon him at the time and place appointed in the summons for the hearing of the case, or is brought***

***before the court under arrest, then, if the complainant, having had notice of the time and place appointed for the hearing of the charge, does not appear, the court shall thereupon acquit the accused, unless for some reason it thinks it proper to adjourn the hearing of the case until some other date, upon such terms as it thinks fit, in which event it may, pending the adjourned hearing, either admit the accused to bail or remand him to prison, or take security for his appearance as the court thinks fit.***

***[Own emphasis]***

8. This provision does provide that the court has the option to acquit an accused in case where the complainant fails to attend court. The decision of what action to take i.e whether to acquit the accused or whether to adjourn the matter is a decision left purely to the discretion of the trial court. The High Court may only interfere where it is shown that said discretion was exercised capriciously or injudiciously.
9. Revision would apply where it is shown that a judicial officer failed to follow correct procedure or failed to adhere to statute.

In this case the prosecutor clearly indicated that despite having been bonded the complainant did not attend court. The law does not specify that at the first hearing the court should grant an adjournment rather than acquitting the accused.

10. Finally the trial **acquitted** the Respondent. An acquittal being a final

order cannot be reversed through a revision order. The Applicant ought to have appealed the decision of the Court. I find no merit in this application for revision. The same is dismissed in its entirety. No order on costs.

**Dated in Nyeri this 6<sup>th</sup> day of March 2026.**

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**MAUREEN A. ODERO**  
**JUDGE**