

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT SIAYA**

**HCCR REVISION NO. E177 OF 2025**

**REPUBLIC .....APPLICANT**

**VERSUS**

**HEZRON ONYANGO OYOO.....RESPONDENT**

**RULING**

1. The prosecution, through a letter dated 25<sup>th</sup> November 2025 has sought for revision of the lower court orders in Siaya CM SO No. E045/2024 made by Hon. Mkala (RM) on 23/10/2025 and 30/10/2025. The gist of the complaint as gleaned from the letter is inter alia; that the prosecution counsel sought for adjournment on 23/10/2025 in order to call the clinical officer who was the last witness; that the trial magistrate declined the request and proceeded to close the prosecution's case without the testimony of the

clinical officer and reserved the matter for ruling on a case to answer for 30/10/2025; that the prosecution subsequently sought for review of the orders but unfortunately the application fizzled within the registry due to mistakes; that on 30/10/2025, the trial court ruled that the accused had no case to answer on count one and was acquitted therefor but was placed on his defence on the second count; that the prosecution stands prejudiced and now seeks for an order of setting aside the orders made on 23/10/2025 and 30/10/2025 and direct that the prosecution be permitted to call their remaining witness in the interest of justice.

2. The Respondent who is acting in person was served with the revision request and who turned up in court on 10/3/2026 and indicated that he was unable to understand the contents of the letter seeking a revision order and that the court directed that the letter in issue be read over to him in Dholuo language which he understood and that he indicated that he has no objection to the request as he had spoken with his parents.

3. I have considered the revision request. Before I delve into the issue, I find that it is appropriate to give a brief glimpse of the record of the trial court, which reveals the following:

i) The prosecution preferred two counts against the Respondent:

a) Count 1- Defilement contrary to section 8(1) as read with section 8(4) of the Sexual Offences Act No. 3 of 2006 with the particulars being that on diverse dates between 24<sup>th</sup> June 2024 and 9<sup>th</sup> August 2024 at Ligoma village in Maliera Sub Location in Gem Sub County in Siaya County, he willfully and unlawfully caused his penis to penetrate the vagina of S. J.A a child aged 17 years.

b) Count 2-Abduction with intent to confine contrary to section 259 of the Penal Code with the particulars being that on diverse dates between 9<sup>th</sup> day of July and 9<sup>th</sup> day of August 2024 at Maseno location in Kheaga sub-county within Kakamega County, he abducted S. J. A a child aged 17 years from the custody of her parent namely Rebecca Akinyi.

c) Alternative to count 1- Committing an indecent act with a child contrary to section 11(1) of the Sexual Offences Act No. 3 of 2006 with the particulars being that on diverse dates between 24<sup>th</sup> June 2024 and 9<sup>th</sup> August 2024 at Ligoma Village in Maliera sub location in Gem sub county in Siaya County he willfully and unlawfully touched the vagina of S.J.A with his penis against her will.

The critical proceedings which have generated the dispute can be seen as from 8/7/2025 upto 30/10/2025 which are as follows:

- 8/7/2025 - the prosecutor M/s Kauma indicated to the court that she was not ready to proceed as the remaining witness is the Doctor who was not bonded. She prayed for adjournment to which the Respondent

did not object and thus the matter was rescheduled to 28/7/2025 and that the trial magistrate marked it as the last adjournment.

- 28/7/2025 - the learned prosecutor M/s Kauma indicated to the court that she did not have the police file and that she sought for another date to which the Respondent did not object. The trial court marked it as the last adjournment and fixed the matter for hearing on 11/9/2025.
- 11/9/2025 - the trial court was not sitting as it was away on official duty. The case was stood over to 9/9/2025 where again the trial court did not sit and that the matter was later fixed for hearing on 23/10/2025.
- 23/10/2025 - learned prosecutor M/s Kauma indicated that she was not ready to proceed due to lack of police file and the witness. She further indicated that the investigating officer had informed her that the case was withdrawn. The Respondent objected to the adjournment and urged the court to dismiss the case. The trial court indicated that the matter has been adjourned severally by the prosecution without giving valid reasons and the trial court proceeded to mark the prosecution's case as closed and reserved the matter for ruling on 30/10/2025 as to whether or not a prima facie case had been made by the prosecution.
- 30/10/2025 - the learned trial magistrate delivered the ruling in which he acquitted the Respondent on

Count 1 but placed him on his defence on County 2 and thereafter read to the Respondent the requisite provisions of Section 211 of the Criminal Procedure Code.

- The prosecution was thus prompted to request for revision of the trial court's orders as herein.

4. Revisionary powers is donated to the High Court under Article 165 (6) and (7) of the Constitution which provides as follows:

(6) The High Court has supervisory jurisdiction over the subordinate courts and over every person, body or authority exercising a judicial or quasi-judicial function but not 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 or authority referred to in clause (6) and may make orders or give any direction it considers appropriate to ensure the fair administration of justice.

5. It is noted that the Applicant herein is aggrieved by the orders of the trial court made on 23<sup>rd</sup> October 2025 and 30/10/2025. The record of the lower court as seen above leaves no doubt that the Applicant sought for several adjournments due to absence of witness and at times police file. The trial court gave the Applicant last adjournment orders on two occasions but the Applicant

failed to put their house in order by availing the witnesses. Indeed, the duty to prove the guilt of the Respondent lay with the Applicant throughout. Under Article 50 of the Constitution, the Respondent is entitled to a fair trial which is efficient and speedy. The Respondent was acting in person over very serious charges. The Applicant appears not to have taken its duties diligently and that upon the issuance of last orders of adjournment it was expected that they would avail the witnesses. A keen look of the reasons advanced by the learned prosecutor for adjournment appeared to be rather cavalier since she did not give reasons to the court as to why the police file and the witness were not in court. The Applicant was expected to convince the court so as to be given another chance. The trial court had the discretion to grant or refuse further adjournments. I am unable to find fault with the learned trial magistrate as the proceedings are quite clear. I do not see any irregularity or impropriety in the manner in which he conducted the proceedings. The Applicant having failed to avail witnesses, then the trial court was entitled to make the requisite orders so as to ensure that the case was not unduly delayed to the prejudice of the Respondent who had no role in the presentation of witnesses. The Applicant must have itself to blame for the manner in which it conducted the prosecution of the matter. There is no prejudice suffered by the Applicant since they have at least managed to

establish a prima facie case regarding the second count. They should proceed with that.

6. Finally, and as noted from the proceedings of this court conducted on 10/3/2026 that the Respondent indicated to the court that he had no objection to the request for revision by the Applicant. Whereas that may be so, this court must take note of the fact that the Respondent was and is still acting in person and therefore he is incapacitated with legal matters. Infact, the said Respondent indicated to the court that even though he had been served with the request for revision letter, he was unable to understand the contents. This court is under obligation to protect the rights and interests of such persons who are unable to understand the legal processes. I find that the Applicant should not seek solace from the sentiments of the Respondent so as to get away with the manner in which it conducted the proceedings before the trial court and therefore I am inclined to find that the Respondent stands prejudiced if the Applicant's request is allowed.
7. In view of the foregoing observations, it is my finding that the Applicant's request for revision dated 25/11/2025 lacks merit. The same is dismissed. The parties should proceed with the directions of the trial court regarding the hearing of the defence case.

**Dated and delivered at Siaya this 16<sup>th</sup> day of March 2026.**

**D. KEMEI**

**JUDGE**

**In the presence of:**

.....**for Applicant.**

.....**Respondent.**

.....**Court Assistant.**