

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
(CORAM: R. MWONGO, J.)
CRIMINAL REVISION NO. E424 OF 2025

HENNETH MUTHONI NJIRU.....APPLICANT
-VERSUS-
THE ODPP.....RESPONDENT

R U L I N G

Background

1. The applicant was charged with the offence of conspiracy to commit a felony contrary to section 393 of the Penal Code. The particulars were that on 28th August 2015, the applicant, together with others conspired to forge a letter from Kanyuambora location Area Chief.
2. During the hearing, the applicant moved the trial court for an adjournment seeking that the Chief's handwriting specimen be taken afresh since the other availed documents he had showed the chief's signatures which could be compared to the fresh specimen. The application was opposed and the trial court delivered a ruling on the same denying the prayers made by the applicant. The trial court determined that the issues of the signature could be canvassed when the Chief is cross-examined. The adjournment was thus denied.

The Application

3. The applicant is seeking the following orders vide an application dated 29th October 2020:
 - 1) That the orders made on 01st October 2025 in Siakago MCCR E255 of 2025 be revised and/or set aside;
 - 2) That the specimen handwriting and signature of the Kanyuambora Area Chief Mr. Edward E. Nderi be taken in the presence of the accused, her counsel and that of the DCIO Mbeere North, and submitted for fresh forensic examination; and
 - 3) That the cost of this application be provided for.
4. The applicant stated that she obtained the letter from the chief for purposes of a different case and the letter was signed personally by the Chief. When she was

charged with the offence stated herein, she requested for an investigation of the signature. However, she said, she had reason to believe that the specimen signature handed over to the investigating body was by a person other than the chief and this was meant to wrongly implicate her. She raised the issue with the trial court but her prayer was denied. She stated that if the orders ought herein are not allowed, she will suffer prejudice and the outcome of the criminal case will possibly prejudice the succession case she is pursuing.

Replying Affidavit

5. PC Farah Mohamed of DCI Mbeere North Subcounty who was the investigating officer in the case swore a replying affidavit. He stated that the applicant purported that she was the second wife of the Munyi Rugucha (deceased) and a letter from the chief for succession purposes did not include her. That she reported the chief to the police and later, another letter including her name under the hand of the chief was found. When the police asked the chief about the second letter, the chief disowned the signature on the said letter. PC Farah then summoned the chief and collected a specimen of his signature for investigation purposes.
6. He stated that he forwarded the impugned letter and the specimen signature to a forensic document examiner to ascertain whether the signatures were by the same person, that is the chief. The forensic examiner found that the documents were not authored by the same person and that is when the applicant was charged with the offence. During the hearing, the trial court urged the applicant to save her prayers for the defense case since the area chief was a witness whom she was allowed to cross-examine. He stated that the applicant's prayer to have the specimen retaken in her presence is a tactic to delay hearing and determination of the matter.

The applicant's Supplementary Affidavit

7. In her supplementary affidavit, the applicant stated that there is no reason for the prosecution to oppose her application if the first specimen signature was collected properly and from the Chief. That no prejudice will be suffered if the specimen is collected afresh and that after close of the prosecution's case, she would have lost the opportunity to have the signature re-examined. She stated that the issue is one of a preliminary nature, and it would have been in the interest of justice that it be addressed before the hearing commenced.

Parties' Submissions

8. When the court sought to direct the parties to file written submissions, they opted to rely on their filed affidavits instead.

Issue for Determination

9. The issue for determination is whether the application has merit.

Analysis and Determination

10. The court has been moved to exercise its revisionary powers over an order of the subordinate court denying the applicant a prayer to have the chief's signature specimen retaken for analysis. This power of the High Court is bestowed to it under Article 167(6) & (7) of the Constitution 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 not 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.”

11. Further, Section 362 of the Criminal Procedure Code provides as follows on the High Court's supervisory jurisdiction:

“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 of any such subordinate court.”

12. The applicant was charged with the offence of conspiracy to commit a felony contrary to section 393 of the Penal Code and the particulars are that she forged the Chief's signature. The investigating officer stated that as part of the investigation, he collected the chief's signature and sent it for forensic analysis alongside the alleged forged document. The specimen was collected in the course of investigation, and in the absence of the applicant who is the accused person.

13. The applicant expressed that she had reason to believe that the specimen collected during investigations was not the Chief's signature since she had seen his signature on several other documents. Article 50(2)(a) of the Constitution guarantees an accused person the right to fair hearing which includes the rights to be presumed innocent until proven guilty. As an accused person, the applicant also has the right under Article 50(2)(k) of the Constitution to adduce and challenge evidence. The application herein is one of the ways of challenging such evidence.

14. It is noted that the respondent made reasonable efforts to collect the chief's signature specimen for analysis before the applicant was charged with the named offence. From the pleadings filed, the respondent will not suffer any prejudice in the event that the specimen is retaken and subjected to a fresh forensic analysis. In any event, the fresh analysis will benefit the court, the prosecution and the accused person and will ensure that justice is served across the board.

Disposition

15. In light of the foregoing, it is my view that the application should be allowed as prayed in the interest of justice. The application is therefore hereby allowed, and the lower court matter shall proceed expeditiously.

16. Orders accordingly.

Delivered, dated and signed at Embu High Court this 22nd day of April, 2026.

**R. MWONGO
JUDGE**

Delivered in the presence of:

1. Applicant Present in Court
2. Mogusu for Applicant
3. Mwaniki for DPP
4. No Representation for AG
5. Stella Kithinji - Court Assistant