



**Republic v Mutinda (Criminal Revision E006 of 2026)
[2026] KEHC 5874 (KLR) (23 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5874 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL REVISION E006 OF 2026
EN MAINA, J
APRIL 23, 2026**

BETWEEN

REPUBLIC APPLICANT

AND

MICHAEL MATHEKA MUTINDA RESPONDENT

RULING

1. This is an application for revision of the decision/ruling of the trial magistrate dated 12th January 2026 which ordered closure of the case for the prosecution before all the witnesses had testified. The grounds for the application are:
 - “(a) That on the 5th July 2023 the Respondent was charged with the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the [Sexual Offences Act](#).
 - (b) That the hearing commenced and 3 witnesses had already testified.
 - (c) That the trial court on its own motion closed the prosecution case on the 12th January 2026 without allowing the prosecution call all the listed witnesses specifically the complainant a minor and the investigating officer.
 - (d) That the magistrate failed to take into account the reasons given by the prosecution Counsel on record for not availing the remaining witness.
 - (e) That the prosecution will be greatly prejudiced in the event the trial magistrate proceed to deliver the ruling without the evidence of the two remaining witnesses.



(f) That this application will be rendered nugatory if the proceedings against the Respondent are not stayed.”

2. The application was opposed through an affidavit sworn on 10th March 2026 by Leonard Nzioka Ngolya, the advocate for the accused person in the case.
3. By the application dated 5th February 2026, learned prosecution counsel urges this court to quash the ruling which ordered closure of the prosecution’s case even before the victim of the offence had testified. Counsel contends that the learned magistrate did not give the prosecution an opportunity to explain why the police file had not been availed in court. The application is opposed on ground that it does not meet the statutory as well as constitutional threshold for revision. Learned Counsel for the accused averred that the court did not coerce, force or bring any pressure to bear on the prosecution to close its case. He contended that it was prosecution Counsel who, on her own volition, applied to close their case; that neither the investigating officer, the victim or her mother were present in court as alleged by Prosecution Counsel; that there is nothing on record to demonstrate that the prosecution applied to recall the victim; that it is never the duty of the trial magistrate to micro manage the office of the DPP; that the criminal trial cannot proceed at the whims and fancies of the prosecution as that would be a flagrant violation of an accused’s right to fair trial and further that this application is an afterthought and a gross abuse of the process of court and it should be dismissed.
4. This court called for the file of the lower court and it has noted that the victim had not completed her testimony. She was stood down on 2nd May 2024 after she broke down in the witness stand. The record shows that case was mentioned severally after that before it was fixed for hearing on 10th July 2025 come that day Mr. Ngolya, Advocate for the accused, sought an adjournment as he was indisposed and the case was adjourned to 19th August 2025. The case proceeded on that day and adjourned for further hearing on 27th October 2025. It did not proceed on 27th October because the police file was not taken to court. It was adjourned to 12th January 2026 when again the police file was not availed and after giving the prosecution the whole morning and part of the afternoon the court delivered a ruling as follows:

- “(1) This court embarked on a drive to clear a backlog of cases in 2026.
- (2) This issue was well highlighted in all CUC meetings last year.
- (3) Since morning, we have waited for police files from Mwala with regards to this case.
- (4) The investigating officer Sgt.... was not available in a previous matter. It is therefore a waste of time to wait for the file to come and there is no substantive investigating officer assigned the file.
- (5) The court shall take a decisive stance and order the prosecution’s case closed.
- (6)

5. It is evident from the above ruling, that contrary to Mr. Ngolya’s assertion, it is the court but not the prosecution that closed the case for the prosecution. It is also clear that the victim was yet to complete her testimony. It is also evident that the delay in finalization of the case was not occasioned by the prosecution alone but also by the defence. It is also trite that the court is enjoined to balance the rights of the accused and those of the victim of the offence which in my view was not done in this case. The victim was a child who did not contribute to the failure of the police to avail its file to the prosecutor.



6. Section 4 (b) of the *Victim Protection Act* enjoins a court to ensure, inter alia, that:

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- (b) every victim is, as far as possible, given an opportunity to be heard and to respond before any decision affecting him or her is taken;

Where the victim is a complainant they are entitled to give their evidence – see Section 13 of the Act which states:

“Where a victim is a complainant in a criminal case, the victim shall, either in person or through an advocate be entitled to—

- (a) subject to the provisions of the *Evidence Act* (Cap. 80), adduce evidence that has been left out;
- (b) give oral evidence or written submission.

7. It is my finding that should the order of the learned magistrate be allowed to stand the rights of the victim in this case shall be compromised. The victim’s right to access to justice shall also have been violated. For those reasons the application is granted and the order closing the prosecution’s case is hereby reversed and set aside pursuant to the powers of this court under Section 364(b) of the Criminal Procedure Code.

8. The order of this court shall be certified to the trial magistrate and the lower court file is to be returned to the lower court forthwith for the learned magistrate to continue hearing the case.

9. The matter to be mentioned before Hon. Nabwana, Wamunyu Law Courts on 30th April 2026 for directions on the further hearing of the case.

It is so ordered.

RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 23RD DAY OF APRIL 2026.

E. N. MAINA

JUDGE

In the Presence of:

Mr. Masila for the State/Applicant

Mr. Ngolya for the Respondent

Tecla - Court Assistant/Interpreter

