



**Gichimu v Republic (Criminal Revision E087 of 2024)
[2025] KEHC 503 (KLR) (28 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 503 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION E087 OF 2024
DR KAVEDZA, J
JANUARY 28, 2025**

BETWEEN

PAULINE WAMBUI GICHIMU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant has filed the present notice of motion dated 26th November 2024 a stay of proceedings of the trial court and seeking revision of the orders of the trial court issued on 25th November 2024.
2. The application is supported by an affidavit sworn by the applicant on the same date. The grounds for the application are as follows: The applicant is facing charges of obtaining money by false pretences, contrary to Section 313 of the *Penal Code*. During the trial, the applicant was unable to secure the attendance of her witnesses. She made an application for adjournment which was denied and the court that the matter proceeds to conclusion. In addition, she was denied an opportunity to adduce evidence and comply with section 106 of the *Evidence Act*. The applicant contends that he will suffer prejudice if judgment is delivered, resulting in her conviction. Consequently, the applicant seeks a revision of the orders issued on 25th November 2024.
3. I have considered the application, the affidavit in support and the applicable law. The power of this court in its revisionary jurisdiction is founded under Section 362 of the *Criminal Procedure Code* (Cap 75) Laws of Kenya which provides that:

The High Court may call for and examine the record of any criminal proceedings before any subordinate court to satisfy 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.
4. It is therefore clear that the powers of revision under section 362 of the Criminal Procedure Code are only to be invoked to enable this Court to satisfy 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 subordinate court. However, the jurisdiction of this court should not be invoked to micro-manage the subordinate courts in the conduct and management of their proceedings for the simple reason that if every ruling of the subordinate Court which went against a party were to be subjected to the revisional jurisdiction of the Court, floodgates would be opened and the Court would be inundated with such applications thus making it practically impossible for the subordinate courts to proceed with any case to its logical conclusion. (See *Haji Mohammed Sheikh T/A Hasa Hauliers vs. Highway Carriers Ltd.* [1988] KLR 806; Vol. 1 KAR 1184; [1986-1989] EA 524)

5. On the merits, this application is based on the ground that the Learned Trial Magistrate had improperly closed the defence case without giving the applicant/accused an opportunity to call her witnesses. What then were the options available to the Court? If on the day when a criminal case is fixed for hearing of the defence case, the defence without any reasonable justification fails to attend Court or refuses to proceed, the Court may at its own discretion adjourn the hearing but nothing bars the Court from exercising its discretion and closing the defence case.
6. The exercise of discretion either way cannot amount to incorrectness, illegality, or impropriety on the part of the trial court to warrant this Court to exercise its revisionary powers to disturb the decision. In this case, there was no reason placed before the trial Court which would have compelled the Court to adjourn the proceedings. Whereas another Magistrate may have exercised its discretion differently, that does not bring the matter within the purview of section 362 of the *Criminal Procedure Code*.
7. It is my finding that no court should be held at ransom by any party to the proceedings and each magistrate is entitled to ensure order and decorum in his/her court. It is therefore my view that the Learned Trial Magistrate was perfectly entitled to proceed in the manner she did and even if this Court would have proceeded differently that does not warrant interference by way of revision. Consequently, the application is dismissed for lacking in merit.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 28TH JANUARY 2025

D. KAVEDZA

JUDGE

