



REPUBLIC OF KENYA



**Republic & 2 others v Macharia (Criminal Revision E086 of 2024)
[2025] KEHC 2215 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2215 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION E086 OF 2024
DR KAVEDZA, J
FEBRUARY 26, 2025**

BETWEEN

REPUBLIC 1ST APPLICANT

SAMUEL MESHAMI 2ND APPLICANT

OPERATIONS MANAGER EQUITY BANK 3RD APPLICANT

AND

RACHEL WANJIRU MACHARIA RESPONDENT

RULING

1. The applicants have filed the present notice of motion dated 18th November 2024 seeking revision of the orders of the Magistrates Court at Kibera issued on 25th November 2024 in Miscellaneous Application No. E1052 of 2024.
2. The application is supported by an affidavit sworn on the same date by the counsel for the first applicant Kathurima C.G. The grounds for the application are as follows: that the Magistrate erred by issuing an order to unfreeze the respondent’s bank account, that the Magistrate erred in fact by reading the judgement of the trial court in part which ordered that the money in the account be released to the complainant company and, that the Magistrate erred by issuing the ex parte orders, in chambers and the absence of the applicants.
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. The operative phrase in considering Applications for revision is therefore "correctness, legality or propriety" of any finding, sentence, or order made by the lower Court. The purpose and nature of the revisionary jurisdiction of the High Court was examined by Odunga J (as he then was) in the case of *Joseph Nduvi Mbuvi v Republic* [2019] eKLR in which he observed as follows:

"In my considered view, the object of the revisional jurisdiction of the High Court is to enable the High Court in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court's revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well."

5. The issue that arises for determination in this matter is therefore whether this Court should exercise its revisionary jurisdiction. 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 Sbeikh T/A Hasa Hauliers v Highway Carriers Ltd.* [1988] KLR 806; Vol. 1 KAR 1184; [1986-1989] EA 524)
6. As deponed in paragraphs eight and nine of the affidavit sworn by Kathurima C.G counsel for the applicant and the response of the respondent Rachel Wanjiru Macharia in paragraphs two and three, it is indeed true that the respondent was asked to see the magistrate in chambers. Soon thereafter, orders were issued to unfreeze the respondent's bank account in the absence of the state counsel. This action by the Magistrate to issue orders in the absence of the state undermined the right of the complainant to be heard.
7. I find that the Magistrate erred in the conduct of the proceedings in three significant respects. First, the application was heard in chambers rather than in open court, contrary to the principles of transparency and procedural fairness. Second, the Magistrate permitted the respondent to access his chambers in the absence of the applicant state, thereby compromising the integrity of the proceedings and violating the applicant's right to be heard. Third, the Magistrate issued substantive orders unfreezing the respondent's account without allowing the applicant state to present its case, which constitutes a serious procedural irregularity.
8. In view of these procedural lapses, I conclude that the entire process was flawed. Accordingly, I allow the application, as the decision was reached in error and cannot stand.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 26TH DAY OF FEBRUARY 2025.

D. KAVEDZA



JUDGE

In the presence of:

Mr. Mutuma for the applicant

Mr. Odeny for the respondent.

Respondent – present

Achode – court assistant

