



**Office of the Director of Public Prosecutions v Ekidor (Criminal Revision  
E030 of 2024) [2025] KEHC 3973 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3973 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MARALAL  
CRIMINAL REVISION E030 OF 2024  
AK NDUNG’U, J  
MARCH 28, 2025**

**IN THE MATTER OF ARTICLE 165 (6) & (7) OF THE CONSTITUTION OF KENYA  
AND  
IN THE MATTER OF SECTION 362 AND 364  
(1) (B) OF THE CRIMINAL PROCEDURE CODE**

**BETWEEN  
THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS . APPLICANT  
AND  
CHARLES EKIDOR ..... RESPONDENT**

**RULING**

1. By way of a Notice of Motion dated 25<sup>th</sup> November, 2024, the Office of the Director of Public Prosecutions (the Applicant) herein sought orders;
  - a. That the High Court does call for the record of lower court file Maralal MCCR.No.E264 of 2024 for purpose of satisfying itself as to the correctness, legality or propriety of ruling on withdrawal of the said matter Under Section 204 of the *Criminal Procedure Code* of 19<sup>th</sup> November, 2024 by Hon. Allan Sitati Temba Senior Principal Magistrate.
  - b. Any other order the court deems fit.The application based on grounds that:-
  1. That the Respondent is charged with the offence of House Breaking Contrary to Section 304 (1) (b) and Stealing Contrary to Section 279(b) of the *Penal Code*.
  2. That the Respondent is a repeat offender having been convicted and sentenced with the same offence under Maralal MCCR No.E199 of 2024 and sentence to serve two (2) years probation.



3. That the Complainant without taking an oath informed the trial court that he wished to withdraw the matter allegedly because he recovered some of the stolen items.
  4. That the Applicant objected the said withdrawal on account of public interest and stealing being rampant within Maralal Town.
  5. That the trial court disallowed the objection and ordered that the Complainant shall proceed to withdraw the case.
  6. That Article 157 of the *Constitution of Kenya* 2010 gives the Director of Public Prosecutions the mandate to prosecute, terminate and take over criminal cases.
  7. That Under Article 157 (11) of the *Constitution of Kenya* the Director of the exercising state powers of prosecutions and termination of prosecutions.
  8. That the Complainant under section 204 of the *Criminal Procedure code* is not limited to the one listed in the Charge Sheet but also the Director of Public Prosecutions the Applicant.
  9. That the trial court erred in law by finding and ordering that the matter should be withdrawn by the complainant without the participation of the Applicant herein.
  10. That the Applicant herein has a duty of not only safeguarding the interest of the victim of crime but also the general public who may be negatively affected by the actions of the accused.
  11. That it is the interest of justice and public interest that the prayers sought herein be allowed.
2. The application is supported by the affidavit of Moses Ndira dated 25<sup>th</sup> November, 2024 which reiterates the grounds in support and lays emphasis on the fact that the Respondent is a repeat offender.
  3. In a replying affidavit, the Respondent admits the existence of earlier cases against him but gives exculpatory claims. He states that in the subject case, the complainant was satisfied with the recovery of his items.
  4. In what is headed as a supporting affidavit, the Respondent maintains that Section 204 of the *CPC* allows withdrawal of cases.
  5. The applicant filed written submissions.
  6. I have had occasion to consider the application, the response thereto and submissions on record.
  7. The question for determination is whether the Applicant has achieved the threshold for revision of the orders of the trial court.
  8. The High Court's power of revision is set out in Article 165 (6) and (7) 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 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.
  9. Section 362 of the *Criminal Procedure Code* provides:-

The High Court may call 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.

10. Section 364(1) of the *Criminal Procedure Code* provides:-

“In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders or which otherwise comes to his knowledge, the High Court may”-a.in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by section 354, 357 and 358, and may enhance sentence;b.In the case of any other order other than an order of acquittal alter or reverse the order.(2)No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence”.

11. This jurisdiction was aptly addressed by Odunga J in a persuasive decision of *Joseph Nduvi Mbuvi v Republic* [2019] eKLR. He stated:-

“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.”

12. It follows from the above background that the revision jurisdiction does not extend to a revisit of a decision of a subordinate court by the High Court where the decision is made on merit.

13. In the instant case, the applicant raises pertinent issues in regard to withdrawal of cases and the obviously unfettered discretion bestowed on the office of the Applicant under Article 157 of the *Constitution*.

14. The ruling of the trial court is quite clear that the finding made allowing the withdrawal was in the court’s words “the considered decision of this court is that.....” connoting a decision on the merit.

15. The decision is thus not amenable to review but to an appeal.

16. For that reason, the application must fail. It is dismissed. The orders of the trial court are to take effect forthwith.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 28<sup>TH</sup> DAY OF MARCH, 2025**

**A.K. NDUNG’U**

**JUDGE**

