



**Gichuhi v Republic (Criminal Revision E354 of 2024)  
[2025] KEHC 9076 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9076 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E354 OF 2024  
RN NYAKUNDI, J  
JUNE 27, 2025**

**BETWEEN**

**SAMMY GICHUHI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

Representation:

Ms. Sidi for the State

1. The accused person herein has been charged with the offence of obtaining money by false pretense contrary to section 313 of the *Penal Code*. Amidst the trial, the prosecution sought to adduce new evidence, which prayer was not granted by the trial court presided by Hon. B. Kiptoo. Aggrieved by the said decision, by way of a letter dated 2<sup>nd</sup> October, 2024, the prosecution sought orders as follows under Art. 165(6) and (7) of *the Constitution* and section 362 and 364 f the *Criminal Procedure Code*:
  - a. That this honorable court urgently call for the file criminal case No. E2214/2021 Republic vs Sammy Gichuhi and Examine the record of the proceedings therein as to the legality and or propriety of the finding made by the said court on the 5<sup>th</sup> August 2024.
  - b. That this honorable court be pleased to alter and/or reverse the said orders made by the lower court on 5<sup>th</sup> August 2024 denying the prosecution the opportunity to introduce new evidence which was a continuation of the existing evidence and further denied the prosecution the opportunity to supply the defence with the said evidence during trial and the same document be admitted as evidence by the trial court.



2. This court is clothed with supervisory jurisdiction to examine the correctness of a decision or order made by the subordinate court under Art. 165 (6) and (7) of *the Constitution*. Further, under Section 362 of the *Criminal Procedure Code* it provides:

“The High Court may call for and examine the record of any criminal proceedings before any sub-ordinate 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 sub-ordinate court.”

3. 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.
4. The revisionary jurisdiction of the High Court was examined by Odunga J (as he then was) in the case of *Joseph Nduvi Mbuvi vs Republic* [2019] eKLR 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. In invoking revisionary jurisdiction therefore, Odunga J in *Joseph Nduvi Mbuvi vs Republic* (supra), stated further as follows:

“14. It is, however my view that the jurisdiction should not be invoked so as to micro-manage the Lower Courts in the conduct and management of their proceedings for the simple reason that if every ruling of the Lower Court and which went against a party were to be subjected to the revisionary jurisdiction of the Court, floodgates would be opened and the Court would be inundated with such applications thus making it practically impossible for the Lower Courts to proceed with any case to its logical conclusion. ....”

6. From the foregoing, it is evident that revisionary jurisdiction of the High Court is only available where there are glaring acts or omissions. In the instant case, it has not been clearly demonstrated that there existed glaring acts or omission when the prosecution was denied a chance to adduce new evidence. It is trite that an application to introduce new evidence and documents will be considered in light of the following; the state at which the trial has reached, the nature of the evidence sought to be adduced and the reasons why it was not availed at the proper stage, the prejudice that may be caused to the other party among other reasons (see *Joseph Mumbero Wanyama v Jared Wanjala Lyani & another* [2019] eKLR).
7. I have perused through the record and the order as made by the trial magistrate. When the application to adduce new evidence was made, the accused person expressed concern as to the prejudice he would suffer given the stage at which the proceedings were. The court noted that the prosecution witnesses had already testified, the first one being on 10<sup>th</sup> November, 2022 and adducing such evidence



would then greatly prejudice the accused person. I am of the considered view that there is no glaring irregularity in the said order given that the prosecution did not establish clearly why the evidence was not availed at the opportune time. In any event, if either party is dissatisfied with the outcome of the trial court, an appeal can be lodged and therein such issues can be ventilated.

8. The application is therefore denied and let the file be returned to the trial magistrate for completion of the trial.
9. Orders accordingly.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 27<sup>TH</sup> DAY OF JUNE 2025.**

.....

**R. NYAKUNDI**

**JUDGE**

