



**Kazungu v Republic (Criminal Revision Application E146 of 2023)
[2024] KEHC 2216 (KLR) (26 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 2216 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL REVISION APPLICATION E146 OF 2023
AK NDUNG’U, J
FEBRUARY 26, 2024**

BETWEEN

EZEKIEL KAZUNGU APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an application for revision of the orders of court in
Nyahururu Cmcrr case no E1336/2023(M.N Ogoro SRM))*

RULING

1. The applicant is aggrieved by an order of the trial court in Chief Magistrates Criminal Case No. E1336 of 2023 made on the 28th November 2023 which order was to the effect that the Applicant was to remain in custody till the finalisation of his trial. He has approached this court through his Advocate’s letter dated 4th December 2023 invoking the revisionary powers bestowed on it seeking the setting aside of the impugned orders. It is sought that the orders be revised and the Applicant be re admitted to bail.
2. The High Court has jurisdiction to entertain an application for revision and its power of revision is set out in Article 165 of *the Constitution* of Kenya 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.



3. Section 362 of the *Criminal Procedure Code* further states:

“The High Court may call for 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”.

4. The record shows that the court on its own motion did order the release of the Accused from custody on 11th December 2023. There is no background information to this release but it is clear from the record that the Applicant had been granted bail by the court (V. Kiplagat SRM) on the 14th September 2023. This is after CM’s Criminal case No. 1269 of 2016 had been withdrawn by the prosecution under Section 87(a) of the *CPC*. One can only conclude that the release was based on the bond terms set in CM’s Criminal case 1269 of 2016 which the Applicant had complied with.
5. The issue of the release of the Applicant is now moot. I have, however, noted irregularity in the manner the court record at the trial court has been managed. The file CM’s Criminal case 1269 of 2016 has been put inside CM’s Criminal case no. E1336 of 2023. This seems to suggest that the former is still live before the court. This is an anomaly. Once withdrawn, that case ceased to exist and the file ought to have been closed and marked as such in the court’s returns subject to return upon application of any exhibits that may have been produced and held in the file.
6. I therefore direct that CM’s Criminal case E1336 of 2023 is to proceed as scheduled independently of the withdrawn CM’s Criminal case No. 1269 of 2016.
7. Since I have not come across any documents supporting bail in the new file other than a release order, the trial court is to regularise the position by having a cash bail payment receipt or surety bond Approval form in the file CM’s 1336 of 2023 as the case may be.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 26TH DAY OF FEBRUARY 2024

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A.K. NDUNG’U

JUDGE

