



**Kangari v Republic (Miscellaneous Criminal Application
39 of 2023) [2024] KEHC 3892 (KLR) (23 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3892 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
MISCELLANEOUS CRIMINAL APPLICATION 39 OF 2023**

**DR KAVEDZA, J
APRIL 23, 2024**

BETWEEN

SARAH WANGARI KANGARI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant is facing four counts of forgery contrary to section 345 as read with section 349 of the *Penal Code*. The matter is pending delivery of judgement before the subordinate court. The applicant has filed the present notice of motion dated 24th January 2024, seeking revision of the orders issued by the trial court on 20th December 2023, closing the defence case. In addition, she prayed that the trial magistrate recuse herself from the case.
2. The application is supported by an affidavit sworn by the applicant of even date. The grounds raised are that when the applicant’s advocate came on record, after the close of the prosecution’s case, he requested to be supplied with court proceedings. However, he was unable to get typed proceedings from the court and was issued with a photocopy of the handwritten proceedings which were illegible. When the matter came up for hearing, the applicant’s advocate prayed for an adjournment to enable them to get typed proceedings. However, the court was adamant and insisted that the defence’s case proceed. In addition, the defence was not allowed to call additional witnesses and was forced to close their case, and a judgement date was issued. The applicant maintained that her advocate did not have enough time to prepare a strong defence. She urged the court to grant the orders sought.
3. I have considered the application, the arguments made 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.

Article 165(6) of *the Constitution* provides that:

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 not over a superior 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. The reason advanced by the applicant was that her advocate had been issued with photocopies of the proceedings but they were illegible. Consequently, she did not have adequate time to prepare a defence. When her advocate sought an adjournment the same was denied and her case was closed.
6. 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.
7. 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*.
8. In addition, the applicant was represented by counsel throughout the trial. Her advocate had an opportunity to cross-examine witnesses. In addition, the advocate who came on record, during the defence stage sought and was granted sufficient time to prepare an adequate defence. In addition, the trial court granted the defence, the last adjournment, noting that the defence had sought and had been granted adjournments on several occasions.
9. 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.
10. On the prayer for recusal, the same applicant has not raised any ground to support the prayer. The same is found to lacking in merit.
11. On the premises, I find no merit in this application which I hereby dismiss. For avoidance of doubt, the order arresting the judgement of the lower court is hereby vacated.



Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 23RD DAY OF APRIL 2024

D. KAVEDZA

JUDGE

In the presence of:

The applicant's advocate absent

Chebii for the Respondent

Nelson Court Assistant.

