



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwambire v Republic (Criminal Revision E118 of 2024)  
[2024] KEHC 6896 (KLR) (28 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6896 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
CRIMINAL REVISION E118 OF 2024  
AK NDUNG’U, J  
MAY 28, 2024**

**BETWEEN**

**EZEKIEL KAZUNGU MWAMBIRE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for revision of the orders of court in  
Nyahururu CMCR Case No 1336 of 2023 M.N. Osoro SRM)*

**RULING**

1. Subsequent to a ruling of this court dated 27<sup>th</sup> February, 2024, the trial court (Hon. M.N. Osoro SRM), ordered this file closed and remarked;  
  
“The previous file court No. 1269/2016 will take precedence since only one person was remaining i.e. the investigating officer. This file is marked as closed.”
2. Those remarks and closure of file were in direct contradiction of the orders of this court dated 26<sup>th</sup> February, 2024. This court had found for a fact that Nyahururu CM Cr. Case No. 1269 of 2016 had been withdrawn under Section 87(a) *Criminal Procedure Code*. That section allows the prosecution to re-institute the charges based on the same facts against an accused discharged under the section.
3. In an apparent compliance with the law, the prosecution did have the Accused/Applicant arraigned in court and charged afresh with the same offence and plea was duly taken on 14<sup>th</sup> September, 2023 before Hon. V. Kiplagat SRM.
4. The court granted bond in terms and conditions earlier set in CMCR Case No. 1269 of 2016 which were a bond of Kshs.500,000/- and 1 surety or a cash bail of Kshs.150,000/-.



5. Two (2) irregularities readily emerge from the record in CMCR Case No. 1336 of 2023. Firstly, on 28/11/2023 the Applicant's bond was without prompting cancelled by the trial court (Hon. M.N. Osoro SRM) and with no reasons recorded. Such cancellation without any reason and/or explanation was irregular. 2ndly, the court closed this file in a blatant disregard of the directions and orders of this court in the ruling dated 26<sup>th</sup> February, 2024.
6. From this background, the revision application vide letter dated 29<sup>th</sup> April, 2024 sits on solid ground.
7. Plea has already been taken in Nyahururu CMCR No. 1336 of 2023 and bail terms set as in the previous file Nyahururu CMCR No. 1269 of 2016.
8. There can be no plausible reason for the continued holding of the Applicant in remand as the court (Hon. V. Kiplagat) did pronounce itself on the terms of bail and the security documents are in the custody of the court.
9. In the premises the orders by Hon. M.N. Osoro RM cancelling the Applicant's bond and closing file Nyahururu CMCR 1336 of 2023 are irregular and amenable for review. I proceed to set aside those orders and make the following directions;
  1. The Applicants bond is reinstated in the terms set by Hon. V. Kiplagat SRM on 14/9/23 and the bond documents held in respect of Nyahururu CMCR No. 1269 of 2016 be substituted in the register to be security documents in respect of bond for the Applicant in Nyahururu CMCR No. 1336 of 2023.
  2. The trial to proceed in the file Nyahururu CMCR Case No. 1336 of 2023.
  3. In view of the history of this trial, the matter be placed before the Hon. Chief Magistrate for re-allocation to another court other than Hon. M.N. Osoro.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 28<sup>TH</sup> DAY OF MAY, 2024**

**A.K. NDUNG'U**

**JUDGE**

