

KENYA / JUDGMENT

Republic v Wanjiku

[2026] KEHC 13591 (KLR)

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COURT

High Court

BEFORE

EM Muriithi

CASE / FILE NUMBER

Criminal Revision E004 of 2025

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 REPUBLIC OF KENYA IN THE HIGH COURT KENYA AT KERUGOYA
CRIMINAL REVISION NO. E004 OF 2025

REPUBLIC.....APPLICANT VERSUS JOSPHINE
WANJIKU.....RESPONDENT RULING ON REVISION

1. By a letter dated 25/2/2025, the Republic as Applicant seeks the review of the Respondent's acquittal, on the basis that on 13/1/2025, the complainant, though within the court precincts, did not testify, as she was unaware that the matter was being heard, and the Investigating Officer's omission to inform the complainant to attend court to give testimony should not be visited upon her. It contends that Article 165 (6) (7) bestows upon this court an expansive jurisdiction to remedy situations of this nature, and cites ***Director of Public Prosecutions v Perry Mansukh Kansagara & 8 others (2020) KEHC 6532 (KLR)***. It prays for the trial court's orders to be reversed and a retrial to be ordered to avert a miscarriage of justice.
2. The Respondent filed grounds of opposition dated 30/1/2026 that;
 1. *That the application is frivolous, vexatious and an abuse of the court process*
 2. *The Applicant has failed to establish any ground upon which the respondent's acquittal may be reviewed.*
 3. *The application does not meet the threshold of section 362 of the Criminal Procedure Code to warrant this honourable court to call for and examine the record of the subordinate court.*

Submissions

1. The Applicant urges that this court is clothed with the jurisdiction to hear and determine the instant application, and cites ***Director of Public Prosecutions v Perry Mansukh Kansagara & 8 Others (2020) KEHC 6532 KLR** and **Republic v Weru & Another (2024) KEHC 13593**

(KLR)*. It urges that on the last day of the hearing the other prosecution witnesses were within the court precincts and the reason for non-attendance was that they were not informed by the investigating officer of the particular court before which the trial was to be conducted. It is submitted that this court has the inherent power to intervene within the purview of Article 165 (6) (7) of the Constitution, and cites ***Kipoki Oreu Tasur v Inspector General of Police & 5 Others (2014) eKLR***. It urges that the order of the trial court that was granted on 12/2/2025 was manifestly irregular/illegal and thus prays for its reversal and for the matter to be transmitted to another court to proceed from where it had reached.

2. The Respondent concedes that this court is clothed with the requisite jurisdiction to hear and determine this application, where it is shown that there was illegality, incorrectness, irregularity or impropriety, and cites ***Joseph Nduvi Mbuvi v Republic [2019] eKLR and Prosecutor v Stephen Lesinko [2018] eKLR***. She urges that the prosecutor informed the trial court that the witnesses were unavailable and proceeded to close the case of his own volition. She urges that the closing of the prosecution's case prematurely because of the unavailability of witnesses, does not in itself form one of the pertinent grounds for revision, and as such the instant application for revision should fail.

Determination

1. There is no doubt as to the constitutional and statutory powers of the High Court to supervise and revise the proceedings of a subordinate court under Article 165 (6) and (7) of the Constitution and section 362 of the Criminal Procedure Code, and the Court respectfully accepts the decision of the court in ***DPP v. Perry Mansukh*** case, supra.
2. The statutory power of the court in revision of orders of the trial court is exercised under section 362 of the Criminal Procedure Code as follows: ***“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.”***
 1. The only issue in this matter is therefore whether the order of the court was legally and properly made in the circumstances of the case.
 2. The court has examined the trial court's file with particularity to the proceedings of 13/1/2025 which precipitated the acquittal of the Respondent.
 3. On that day, the prosecutor informed the court that, ***“Further hearing. I have no witnesses. No reason for absence. I close prosecution case.”***
 4. This court cannot discern any illegality, irregularity or impropriety in the manner in which the trial court's proceedings were conducted. The record shows that the prosecutor elected to close the case on his own motion, without any direction, coercion or other form of compulsion from the trial court.

5. The DPP's strenuous argument in its submissions dated 22/9/2025 does not avail it as it submits: **“(2) Illegality of the Proceedings**” [I]t is worth noting that the impugned ruling emanated from unfortunate scenario where **“the prosecution case was closed with the only the evidence on record being that of the victim: no prosecution witnesses were in court in subsequent court hearings compelling the prosecution to close its case.”** The applicant's case is that on the last day of the hearing the other prosecution witnesses were within the court precincts and the reason for non-attendance was that there were not informed by the investigating officer (I.O.) of the particular court where the trial was to be conducted. In the above regard, **“it is the applicant's case that it was incumbent upon the trial court to make a sufficient inquiry on the prevailing situation before closing the Prosecution case and handing down the ruling that resulted in acquittal of the Respondent.** Further, the applicant submits that the situation was compounded by the I. O.'s inaction that occasioned an injustice to the innocent victim and further called into question the integrity of the trial process.”
1. The trial court acted on the request by the DPP to close its case, and it cannot properly be faulted. There was no evidence before the court to support the charge, and the natural consequence was dismissal of the charge. The Court could not make “sufficient inquiry” when the Prosecution had already represented to the court that there were no witnesses and it was closing its case.
2. There is, therefore, no basis upon which the Applicant can properly attribute the closure of its case to any impropriety, illegality or irregularity on the part of the trial court. Moreover, the Applicant's assertion that the complainant, who was in court on the material date, was misinformed and/or misdirected by the Investigating Officer, is unsupported by evidence, and cannot, therefore, stand.

ORDERS

1. Accordingly, for the reasons set out above, the Court finds no merit in the application and the Revision is declined.
2. File closed. Order accordingly. **DATED AND DELIVERED THIS 17TH DAY OF SEPTEMBER 2026. EDWARD M. MURIITHI JUDGE** Appearances: Mr. Charles Mwangi for the DPP/ Applicant. Mr. Raphael Mwangi for the Accused/Respondent.

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