REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

(Coram: Odunga, J)

CRIMINAL REVISION NUMBER 215 OF 2018

(From original order in Machakos Chief Magistrate's Criminal Case No. 707 of 2016)

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

JOHN WAMBUA MUNYAO.....1ST RESPONDENT

WYCLIFFE OSORO.....2ND RESPONDENT

STEPHEN OGAGA OLULA.....3RD RESPONDENT

PAUL KATIKU MUINDI.....4TH RESPONDENT

RULING ON REVISION

1. By a letter dated 12th July, 2018, the applicant herein requested that this Court calls the record and proceedings in Machakos Chief Magistrate's Criminal Case No. 707 of 2016 with a view to examining the same and in particular the orders issued on the 11th July, 2018 closing the prosecution's case in the absence of the prosecuting counsel.

2. According to the applicant, when the said criminal case came up for hearing on 11th July, 2018, the Applicant's Prosecution Counsel, **Naomi Waweru**, was feeling unwell and was unable to attend court on that day as she had sought medical treatment. She therefore briefed her colleague, **Ms Adera**, who was attending to Court 4 to hold her brief. She further informed the Court Assistant for the Trial Court, **Mr Mungai**, that she was feeling unwell and that she had briefed **Ms Adera** to hold her brief and inform the Court.

3. According to the applicant, **Ms Adera** informed the said Court Assistant that she would attend to Court 3 once she was done with the cause lists call over in Court 4 for both Courts 2 and 4. It was averred that when the matter was called out **Ms Adera** was still going through the Cause call over in Court 4 and that the matters proceeded in the absence of the prosecution. By the time **Ms Adera** went to Court 3 at 11.00 am she found that the matter had been called out in the absence of the prosecution counsel and orders made marking the prosecution's case closed and the matter was reserved for the filing of submissions on 25th July, 2018.

4. In the letter seeking revision, it was averred that in view of the negative sentiments made by the trial court in relation to the prosecution, the court showed open bias and partiality when handling the matter.

5. It was submitted by the applicant that a properly constituted court is a tripartite entity comprising of the judicial officer, the accused person and/or his advocate and the prosecution counsel. According to the applicant, under the ***Criminal Procedure Code*** there is no situation envisaged when a criminal court could be properly constituted without a prosecution counsel being present. Furthermore there is no law that allows a magistrate to close the prosecution's case on behalf of the prosecutor. To the applicant, Article 10 of the Constitution embodies observance on values and principles of governance that bide all the state organs, state officers, public officers and all persons whenever any of them acts applies or interprets any law or makes or implements public policy decisions. It is trite law that in an adversarial system or inquisition system in criminal trials both parties must be present throughout the proceedings from pretrial, trial and final judgment. It was therefore submitted that the learned trial magistrate acted erroneously by closing the prosecution's case in the absence of the prosecution counsel. In this respect the applicant relied on High Court Revision No. 4 of 2018, **Republic versus Alice Chepkoriri Koech & Another [2018] eKLR.** In this case, it was submitted that the prosecution was not given a chance to adduce all the evidence it intended to rely on before the close of its case before the trial court. It was therefore its submission that the trial court violated the equality of arms.

6. To the applicant, the right to a fair trial as envisaged under Article 50 of the Constitution is meant to not only serve the accused person but also the victims. It was the applicant's submission that the victim's right to be heard were violated when the prosecution's case was closed at a premature stage without giving the victims a chance to be heard. It was contended that it is this courts duty to preserve and protect the victims' rights to justice and due process and reliance was placed on High Court Revision No. 9 of 2018, **Prosecutor vs. Stephen Lesinko [2018] eKLR.**

7. It was contended that the prosecution's case showed anger and bias as the decision to close the prosecution's case was based on the previous days encounter with the prosecution and not on the prevailing circumstances. In the applicant's view, it is not clear how the magistrate confirmed that there were no witnesses in court since he was not seized of the police file to enable him call out the names of the witnesses in open court and indeed confirm that there were no witnesses in court. According to the applicant, witnesses had been bonded and were in court when the matter was marked as closed and it relied on **Republic vs. Alice Chepkorir & Another [2018] eKLR.**

8. The applicant submitted that the court as an institution mandated to enforce and uphold justice ought to have explored other avenues of dealing with the issue of non-availability of the prosecutor instead of closing the prosecution's case which act violated the right to a fair trial. It was submitted that the mistake of the prosecution whether actual or alleged prosecution should not be visited on the victims who need the protection of the court as doing so would serve to violate the doctrine of fairness. To the applicant, the court should not punish the victims in view of the prosecution's mistakes, otherwise this is a victim's case and the prosecutor is only there to aid the presentation of the victim's case.

9. It was submitted that the Court was well aware that there is a shortage of prosecution counsel in Machakos and in case of one counsel being indisposed other counsel have to finish with their own courts before they can attend to the court whose counsel is indisposed.

10. The applicant's case was therefore that fair trial is the main objective of criminal procedure and it's the duty of the court to ensure that such fairness is not hampered or threatened as disclosed in this application. Fair trial entails the interest of the accused, the victim and the society and therefore fair trial includes the grant of fair and proper opportunities to the concerned and the same must be ensured as that is a constitutional as well as human right. It was therefore submitted that the decision by the trial court was in violation of the right to fair trial and misinterpreted the letter and spirit of the constitution of Kenya thereby belittling the supreme law of the land. To the applicant, the trial court did not take into account the gravity of the offence, the accused person were facing. It was noted that the prosecution had been proceeding with the hearing of the matter and at no time had the trial court found it fit to grant a last adjournment.

11. In support of its submissions, the applicant relied on Article 157(1) of the Constitution and submitted that the law grants the Director of Public Prosecution the specific power to initiate, control and undertake criminal proceedings against any person is under the Director of Public Prosecutions and in doing so the director of public prosecution is an officer of this court and in conducting his duties is bound by the provisions of Article 10 of the Constitution, and as such is held to a higher calling to conduct themselves with decorum and dignity. As an officer of this court the prosecution counsel is duty bound to assist the court to arrive at a just decision.

Under Article 157 (II) the Constitution enjoins the Director of Public Prosecutions to exercise powers under ***Article 157*** with due regard to public interest, the interest of administration of justice and the need to prevent and avoid abuse of the legal process. In practice, it was submitted that the courts have always acted on the word of the prosecuting counsel or public prosecutor who controls and guides criminal proceedings.

12. It was contended that it was therefore preposterous for the defence counsel to attack the character of the prosecution counsel by alleging that the prosecutor who was indisposed had lied to this court while not availing any evidence to the contrary as this goes against the rules of professional ethics. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers including the prosecution and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

13. The Court was therefore urged to be guided by article 159(d) of the Constitution which provides that justice shall be administered without undue regard to technicalities and the purpose and principles of this constitution shall be protected and promoted.

14. The 1st Respondent opposed the application by way of the following grounds of opposition:

1) That the Application and the Revision are mischievous in nature with intentions to delay the proceeding in CMCR No. 707 of 2016.

2) That it is the duty of the prosecution to prosecute criminal matter and to avail witness in court to give evidence, therefore failure by the prosecution to attend court and avail witnesses when the matter came up for hearing on the 11-7-2018 clearly demonstrates that they are not interested in discharging their obligation hence lost interest in the case.

3) That there is no justifiable reason given by the prosecution counsel handling the matter as to why she never attended court on 11-7-2018.

4) That the averment in paragraph 3,4,5,6 & 7 in the supporting affidavit sworn by M/S Naomi Waweru is based on false hood and dishonesty.

5) That justice delayed is justice denied, re-opening the prosecution's case shall occasion injustice on part of the 1st Accused/Respondent person who is in custody since the trial of this case commenced way back in 2016.

6) That it is in the interest of justice that the rights of the accused person in regard to a speedy trial be observed and respected.

7) That the Application and the Revision before this honourable court are anchored on laxity on part of the prosecution to discharge their obligation hence it should be dismissed.

15. The 3rd Respondent in opposing the application filed a replying affidavit in which it was deposed that the prosecutor herein has been reluctant in prosecuting the criminal case ever since she took over the matter on 8th November, 2017. According to the 3rd Respondent, on 11th July, 2018 when the matter came up both the prosecutor and the prosecution witnesses were absent without prior communication either to the Court or to the Court Assistant and that if the prosecutor informed the Court Assistant of her being unwell it remains unclear why the Court Assistant did not communicate this to the trial magistrate since neither **Ms Adera** nor the Court Assistant have sworn any affidavit.

16. According to the 3rd Respondent he was arraigned in Court on 18th July, 2016 before plea taking only for the first hearing to kick off on 20th September, 2017 with only ten witnesses out of the intended twenty eight.

17. According to the 3rd Respondent the orders made by the trial court are neither illegal nor improper, but are such orders as the magistrate had the power to make and that since trial court do make similar orders against the defence, the prosecution should not be an exception. To the 3rd Respondent, an intervention by this Court would amount to interfering with judicial independence of

Magistrate's Court as the matters raised are not matters for review.

18. Similarly, the 4th Respondent opposed the application vide the following grounds of opposition:

1) That the said Application and Revision are premised on falsehood and dishonesty.

2) That the failure by the prosecution and its witnesses to show up in court on 11-7-2018 when CMCR No. 707 of 2016 was coming up for further hearing was a clear manifestation that they had lost interest in the matter.

3) That the Prosecution/Applicant has not availed any correspondence to confirm that she had instructed prosecution counsel Ms. Adera to hold her brief.

4) That the Prosecution/Applicant has not availed any communication data from any service provider to confirm that she had any communication with the Court Assistant Mr. Mungai.

5) That there is no communication data availed between prosecution counsel Ms. Adera and Court Assistant Mungai.

6) That in any case Mr. Mungai did not inform the trial court of that position.

7) That the assertion of indisposition is highly doubtful because the authenticity of the sick sheet is questionable.

8) That the 4th Respondent is in custody enduring hardship and suffering hence re-opening the prosecution case will be extremely prejudicial.

9) That the aforesaid Application and Revision are an afterthought which is solely geared towards covering up on the prosecution's casualness in handling CMCR No. 7070 of 2016.

10) That the aforementioned Application and Revision are an abuse of the court process and thus should be dismissed.

19. It was submitted on behalf of the 1st and 4th Respondents that the Trial Magistrate exercised the wide powers and unfettered discretion conferred on him to close the prosecution case owing to the lack of seriousness and/or casualness from the prosecution. In this respect the said Respondents relied on **R B Benedict Kolorwe Kaweto [2008] eKLR**, Articles 50 and 159 of the Constitution and submitted that it is the accused's right to have the trial begin and conclude without unreasonable delay. To the said Respondents the Trial magistrate was perfectly within his purview in issuing the orders of 11th July, 2018 hence there are no sufficient grounds to warrant revision of the same.

20. On behalf of the 3rd Respondent it was submitted that in criminal case number 707 /2016 before the senior resident Magistrates' Court, the four respondents were charged jointly with two counts of the offence of robbery with violence contrary to section 296(2) of the ***Penal Code***. Additionally, the 1st respondent was charged with a third count of having suspected stolen property contrary to section 323 of the ***Penal Code*** and a fourth count of keeping government stores in a building contrary to section 324 of the ***Penal Code***.The aforesaid lower court matter was scheduled for further prosecution hearing on 11/7/2018 and it was on the said material day that the prosecution together with the prosecution witnesses failed to attend court as was required of the prosecution. As a result all the defence counsel present made a unanimous application for the prosecution's case to be closed which prayer was granted by the trial magistrate **Hon.Shikanda**. Similarly the defence took directions to file submissions on no case to answer which directions were complied with as at 31/7/2018 and a date for ruling given to be 15/8/2018.

21. It was submitted that the present application is brought under section 349 of the ***Criminal procedure Code*** which essentially is on the limitation of time for appeal. However, section 364 of the ***Criminal Procedure Code*** is the appropriate provision on the powers of the High Court on revision.

22. While reiterating the contents of the replying affidavit, it was submitted that the Court should be guided by the sentiments of

Lenaola, J. (as he then was) in ***R. v. Benedict Kolorwe Kaweto*** **[2008] eKLR**, which case was cited in **Republic versus Alice Chepkorir Koech**. In light of the foregoing it was submitted that the applicant willfully failed to attend court on 11/7/2018 and as such the orders made by the trial court were not illegal or improper but were such powers conferred upon a magistrate.

23. It was the 3rd Respondent's position that the application for revision is devoid of merit in its entirety and should be dismissed.

Determination

24. I have considered the material before, the submissions as well as the authorities cited and this is the view I form of the matter.

25. As pointed out by the respondents the application was improperly expressed to be brought under section 349 of the ***Criminal Procedure Code***. However nothing serious turns upon that point as the Respondents were aware of the correct legal provision though counsel ought to exercise care in ensuring that correct legal provisions are cited.

26. I agree with the general proposition High Court Revision No. 4 of 2018, **Republic versus Alice Chepkoriri Koech & Another [2018] eKLR**, that:

"section 21 of the Criminal Procedure Code appears to require a positive act by the prosecution which adduces evidence in support of the charge and the taking of any submission, if any before ruling on a case to answer."

27. I also agree with the opinion in High Court Revision No. 9 of 2018, **Prosecutor vs. Stephen Lesinko [2018] eKLR**, that:

"the victim and the complainant have a compelling interest to know the outcome of the criminal case against the accused and its improbable to answer this concern with the answer that the prosecution did not attend proceedings."

28. Article 165(6) and (7) of the Constitution confers upon this Court supervisory jurisdiction over subordinate courts and empowers this Court to make any order to give any direction it considers appropriate to ensure fair administration of justice. The said provisions are couched in the following terms:

(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 not over a superior court.

(7) for the purpose of clause (6), the High Court may call for the record of any proceedings before any court or person, body of 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.

29. As regards the ***Criminal Procedure Code,*** the correct legal provision ought to have been section 362 of the ***Criminal Procedure Code*** provides 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.

30. Section 367 of the ***Criminal Procedure Code***, on the other hand, provides as hereunder:

When a case is revised by the High Court it shall certify its decision or order to the court by which the sentence or order so revised was recorded or passed, and the court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified, and, if necessary, the record shall be amended in accordance therewith.

31. 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 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. Therefore, if out of anger the Court makes a decision which wanting in its correctness, legality or propriety or the proceedings are irregular, this Court no doubt will step in and correct the same. That is my understanding of the position adopted in **Republic vs. Alice Chepkorir & Another [2018] eKLR** where the court held that:

"it would also appear that the learned trial magistrate fell into anger to make a finding and conclusion not fully based on evidence before the court but on assumptions and personal knowledge of the circumstances when she said in her ruling: "As at now there is no prosecution in court. I am aware all the other three courts are not sitting as at now. There are two prosecutors at this station at least one should be before this court. This court cannot be held at ransom…'

32. However as was held by **Apaloo, JA** (as he then was) in **Haji Mohammed Sheikh T/A Hasa Hauliers vs. Highway Carriers Ltd. [1988] KLR 806; Vol. 1 KAR 1184; [1986-1989] EA 524:**

"One's experience teaches one that charges of bias or ill-will against a Judge or adjudicator are usually made by defeated litigants often motivated by disappointment at adverse verdicts. Where a party or his advocate's conduct is deserving of judicial censure, strong language by the Judge in condemnation of that conduct cannot properly be stigmatised as bias or judicial hatred. Nor does it justify an appellate Court in substituting its discretion for that of the trial court regardless of the facts, or provide such Court a warrant for exercising that discretion in favour of a party, who, on the facts, is entirely undeserving of it…There was nothing wrong in the Judge restoring the judgement on the day fixed for mention since there was no defence. Such a course was eminently just since the Judge himself was under a statutory duty bestowed on him by section 3 of the Judicature Act to do justice to the parties without "undue delay". It was not and cannot be suggested that the Judge cannot properly do this. It was not suggested that in taking this course he infringed any procedure, rule or indeed any principle of justice. By what strength of imagination can this normal judicial action be interpreted as bias or hatred of the appellant's counsel" At all events, the judgement was not given against lawyers but was given against a party whom the Judge believed, with good reason, was seeking to employ tactics of delay to avoid or postpone the payment of what seems a just debt…A judge is always entitled to take judicial notice of notorious facts and therefore his comment that it is a well known fact that in 1983 a registered letter posted in Nairobi cannot reach Mombasa earlier than five days cannot be faulted since there is nothing esoteric about the time a registered letter posted from Nairobi takes to reach Mombasa that it cannot be well-known to a Judge or can only become "known" to him by an adduction of formal evidence."

33. Therefore it is my view that that 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 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 Lower Courts to proceed with any case to its logical conclusion.

34. Where an issue arises as to whether the decision of the Court below is correct in its merits either as a result of wrong exercise of discretion or otherwise, but which decision does not call into question, its legality, correctness or propriety, the right approach is to appeal against the same preferably at the conclusion of the proceedings or in limited instances before then. Dealing with the right to appeal in interlocutory ruling in a criminal matter, the Court of Appeal in **Thomas Patrick Gilbert Cholmondeley vs. Republic[2008] eKLR**, held that:

"In ordinary criminal trials, there is generally no interlocutory appeals allowed for section 379 (1) of the Criminal Procedure Code allows only appeals by persons who have been convicted of some offence. The Appellant has not been convicted of any offence. As far as we understand the position the basis of an appeal cannot be that an order made in the course of a trial is highly prejudicial to an accused person; Muga Apondi, J ruled that the appellant had a case to answer and even if that order would be seen as being prejudicial that alone would not have entitled the appellant to appeal. But the basis of this appeal, as far as we are concerned is that the learned Judge made an order in the course of the trial which violated the appellant's fundamental rights guaranteed by section 77 of the Constitution. Whether that order was made pursuant to section 60 (1) of the Constitution, and we have found it could not have been made under that section, or whether it was made pursuant to the exercise of inherent jurisdiction as the learned Judge said he was doing, the effect of the order was to violate the appellant's rights under section 77. The appellant had two choices. He could have chosen to wait until after the determination of the charge against him and if he was convicted, he would be entitled to appeal on all aspects of the trial. Secondly, he had the option to appeal under section 84 (1) of the Constitution."

35. However the Court also expressed itself as follows:

"We would, nevertheless, sound a caution against the exercise of the undoubted right of appeal under *section 84 (7)* of the Constitution. First the fact that a trial Judge has made an adverse ruling against an accused person in a criminal trial does not and cannot mean that the Judge will inevitably convict. The Judge might well acquit in the end and the adverse ruling, even if it amounted to a breach of fundamental right, falls by the wayside and causes no harm to such an accused. The advantage of that course is that the long delay in the hearing of the charge is avoided and in the event of a conviction the matter can be raised on appeal once and for all. In the present appeal the delay has spanned the period from 25th July, 2007 to date, nearly one year. The trial before the learned Judge will, however, resume and go on to its logical conclusion. We think it is against public policy that criminal trials should be held up in this fashion and it is our hope that lawyers practising at the criminal bar will appropriately advise their clients so as to avoid such unnecessary delays. We would add that in future if such appeals are brought the Court may well order that the hearing of the appeal be stayed pending the conclusion of the trial in the High Court."

36. In my view, the revisionary jurisdiction of the High Court should only be invoked where there are glaring acts or omissions but should not be a substitute for an appeal. In other words parties should not argue an appeal under the guise of a revision. It is for this reason that the decision whether or not to hear the parties or their advocates is discretionary save for where the orders intended to be made will prejudice the accused person. As was stated by the High Court of Malaysia in **Public Prosecutor vs. Muhari bin Mohd Jani and Another [1996] 4 LRC 728 at 734, 735:**

"The powers of the High Court in revision are amply provided under section 325 of the Criminal Procedure Code subject only to subsections (ii) and (iii) thereof. The object of revisionary powers of the High Court is to confer upon the High Court a kind of "paternal or supervisory jurisdiction" in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice…If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion…This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammeled and free, so as to be fairly exercised according to the exigencies of each case".

37. That was the position adopted by **Waweru, J** in **Republic vs. Samuel Gathuo Kamau [2016] eKLR**, where the Learned Judge observed that:

"Needless to say, that supervisory jurisdiction is exercised as may be provided by law – by way of appeal, revision, etc. it does not include on any perceived power to make a decision on behalf of a subordinate court which that court ought to make. In the case of appeals the supervisory power is exercised in respect to conviction, sentence, acquittal (section 347, 348 and 348A of the Criminal Procedure Code). As for revision, the supervisory jurisdiction is exercised in respect to findings, sentences, orders and regularity of any proceedings. See Article 165(7) of the Constitution and Section 362 and 364 of the Criminal Procedure Code."

38. On the merits, this application is based on ground that the Learned Trial Magistrate had no jurisdiction to close the prosecution's case in the absence of the prosecutor. That issue calls into question the options available to the Court when the prosecutor is absent from Court without any reason being given to the Court for his absence. In this case, it is contended that the absence of the prosecutor was due to illness and that the Court Assistant was duly informed that another Prosecution Counsel would stand in for the indisposed Prosecution Counsel. However the briefed Prosecution Counsel went to attend to her maters first but purportedly informed the Court Assistant of the position. I must state with due respect to the applicant that this was a rather casual and nonchalant way of handling such a serious matter. In my view it would have been more prudent if the briefed Prosecution Counsel had gone to see the Magistrate before the proceedings commenced and sought for allocation of time when she would expect to attend to her colleagues matters. In this case what happened was that there is no evidence that the reasons for the absence of the Prosecution Counsel was brought to the attention of the Court when the Court commenced its sittings.

39. What then were the options available to the Court" In **Roy Richard Elimma & Another vs. Republic Cr. Appeal No. 67 of 2002,** the court of appeal in considering ***Section 202 of Criminal Procedure Code*** dealt with the issue of complainant and stated:

"The parties named in Section 202 for example, are all complainants and the accused person if the complainant is aware of the hearing date and is absent without explanation, the court may acquit the accused person, unless the court sees some other good reason for adjourning the hearing. The "complainant" in this contest has been interpreted to mean the "Republic" in whose name all Criminal Prosecutions are brought and not the victim of the crime who is merely the chief

witness on behalf of the Republic."

40. Therefore if on the day when a criminal case is fixed for hearing the prosecution without any reasonable justification fails to attend Court, the Court may at its own discretion adjourn the hearing but nothing bars the Court from exercising its discretion and acquitting the accused. The exercise of discretion either way cannot amount to incorrectness, illegality or impropriety on the part of the trial court so as to warrant this Court exercising 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.*** As was, rightly in my view, held by **Lenaola, J** (as he then was) in **R vs. Benedict Kolorwe Kaweto [2008] eKLR:**

"7. Regarding the proceedings of 4/6/2007, it would be expected that in a criminal trial there should be a prosecutor. In this case, the trial magistrate by 11.58 a.m. had not seen a prosecutor in his court and having called out the case, and there being no witness present, he deemed the case as closed and proceeded to write his Ruling. These proceedings were and cannot be a nullity in the absence of an explanation as to where the prosecutor was and where the remaining witnesses were.

8. No court should be held at ransom by the prosecution and each magistrate is entitled to ensure order and decorum in his court.

9. There is nothing to revise in this matter and I decline to issue any such orders."

41. It is therefore my view that the Learned Trial Magistrate was perfectly entitled to proceed in the manner he did and even if this Court would have proceeded differently that does not warrant interference by way of revision as opposed to an appeal.

42. In the premises, I find no merit in this application which I hereby dismiss. For avoidance of doubt the order staying proceedings of the lower court is hereby vacated.

Read, signed and delivered in open Court at Machakos this 21st day of December, 2018.

G.V. ODUNGA

JUDGE

Delivered in the presence of:

Miss Mogoi for the Applicant

Mr Mutinda Kimeu for Mr Mutula for the 4th Respondent

Miss Nzilani for the 3rd Respondent and holding brief for Mr Langalanga for the 1st Respondent and Miss Jerobom for the 2nd Respondent

CA Geoffrey