



REPUBLIC OF KENYA



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Walingo v Republic; Seno & 3 others (Interested Parties) (Criminal Revision E170 of 2022) [2023] KEHC 315 (KLR) (23 January 2023) (Ruling)

Neutral citation: [2023] KEHC 315 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL REVISION E170 OF 2022**

TM MATHEKA, J

JANUARY 23, 2023

IN THE MATTER OF THE CRIMINAL PROCEDURE CODE CAP

75

AND

IN THE MATTER OF CASE NUMBER ACC. NO. 2 OF 2020

AT THE CHIEF MAGISTRATE'S COURT AT NAKURU

AND

IN THE MATTER OF AN APPLICATION BY MARY KHAKONI

WALINGO FOR REVISION OF THE RULING AND ORDERS BY

THE LEARNED TRIAL MAGISTRATE MADE ON THE 8 TH APRIL

2022

BETWEEN

MARY KHAKONI WALINGO APPLICANT

AND

REPUBLIC RESPONDENT

AND

SIMON KASAINI OLE SENO INTERESTED PARTY

JOHN ALMADI OBERE INTERESTED PARTY

ANACKLET BIKETI OKUMU INTERESTED PARTY

NOOR HASSAN ABDI INTERESTED PARTY



RULING

1. Before me is the amended Notice of Motion filed on 6th May 2020. . It was first filed on 21st April 2022. It was amended to add the names of the 1st to 4th Interested Parties which had been omitted inadvertently.
2. The motion is brought under Articles 25 (c) & 50 of the Constitution, Sections 362 & 364 of the Criminal Procedure Code Cap 75 Laws of Kenya. The Applicant Mary Khakoni Walingo sought orders;
 - i. Spent
 - ii. That this Honourable court be pleased to stay proceedings in Anti-Corruption Criminal Case Number 02 of 2020 pending the determination of this application in the manner the court shall direct.
 - iii. That this Honourable Court be pleased to call for and examine the record of the criminal proceedings in Anti-Corruption Criminal Case Number 2 of 2020 at the Chief Magistrate's court in Nakuru to satisfy itself on the correctness, legality, propriety and regularity of the proceedings and therefore the ruling and orders made therein on the 8th April 2021.
 - iv. That this Honourable Court upon calling for and examining the record of the criminal proceedings in Anti-Corruption Criminal Case Number 2 of 2020 at the Chief Magistrate's Court in Nakuru as to the correctness, legality, propriety and regularity of the proceedings and therefore the ruling and orders made therein on the 8th April 2021, be pleased to exercise its revisional directions to reverse and set aside the decision of the subordinate court rendered on the said 8th April, 2022, to wit Honorable Bildad Ochieng that held *inter alia* that the 1st accused person was guilty of interfering with the prosecution's witnesses.
 - v. That costs of the Application be provided for.
3. The grounds for the Motion are on the face of the application and the Supporting Affidavit sworn by Albert S. Kuloba Advocate. The grounds as set out are:
 1. That the University Council of Maasai Mara University during the pendency of the Anti-Corruption Case Number 2 of 2020 by letters authorized by its Chairman of the Council and others by the University's Acting Vice Chancellor either dismissed and/or re deployed some persons working at the university, persons whom the prosecution regarded as their key witnesses.
 2. That the persons either dismissed or redeployed who the prosecution considered as their key witnesses in Anti Corruption Case Number 2 of 2020 were:-
 - i. Dr. Anthony Yaile
 - ii. Professor Mohammed Adile
 - iii. Mr. Stanley Yiale
 - iv. Mr. Spencer Ololchike Sankale
 - v. Ms. Priscah Nchoe



3. That the said persons were either dismissed or redeployed *vide* letters written by the Maasai mara University's Chairman of its Council Dr. Samwel Ochola and the Acting Vice Chancellor of th Maasai Mara University Professor Kitchie Magak.
 4. That following the dismissal and or redeployment of persons named above, the prosecution in Anti-Corruption Case Number 2 of 2020 filed an application dated 22nd September 2020 seeking *inter alia* that the accused persons in the Anti-Corruption case Number 2 of 2020 be denied access to their offices at the Maasai Mara University, that they do not contact or communicate with the witnesses in any manner directly or through the University Council Management, that the University's Acting Vice Chancellor and or management does not hold any disciplinary meetings or action against the witnesses in form of dismissing them from employment.
 5. That the court following an oral application by the 4th accused persons' counsel directed that the persons said to have been dismissed or re deployed by the Maasai Mara University allegedly at the behest of the accused persons, be cross examined on the allegations in the prosecution's application dated 22nd September 2020 and on the letters that had been apparently written by the Acting Vice Chancellor and Chairman of the Maasai Mara University Council, either dismissing the persons named above or re deploying them.
 6. That the trial court found the 1st and 2nd accused persons guilty of *inter alia* interfering with the prosecution witnesses when the persons allegedly said to have been influenced to write the letters were never called to confirm that they were indeed influenced by the 1st and 2nd accused persons to write the dismissal or re deployment letters of the prosecutions' witnesses.
 7. That the court in finding that the 1st and 2nd accused persons were interfering with prosecution and thus should be barred from visiting the Maasai Mara University unless under police surveillance, arrived at the decision without any evidence that confirmed that the 1st and 2nd accused persons were ever found or seen at the university premises ever since the criminal charges were preferred against them.
 8. That the 1st accused person was in any case never cross examined by the prosecution on her replying affidavit dated 7th October 2020 where she had categorically denied the allegations of her interfering with witnesses and no mention in the trial magistrates ruling was made that he considered the 1st accused persons facts contained in her replying affidavit.
 9. That it is therefore imperative that in light of the above cited omission and particularly the availing of the Acting Vice Chancellor of Maasai Mara University and the Chairman of its council who were said to have been influenced by the 1st and 2nd accused that the ruling and orders of 8th April 2022 ought to be reversed and set aside.
 10. That it is evident from the record that the trial court arrived at its direction by only hearing the oral evidence of the Prosecution only as such this offends the principles of according a fair hearing and thus negates the principles of natural justice.
4. In the Affidavit of Support counsel reiterated the grounds set out above, and annexed a copy of the application by the DPP.
 5. Vide a Ruling dated 11/5/2021 I dealt with prayer No. 2 whereby I declined to stay the proceedings pending the hearing and determination of this application.



6. The only outstanding issue is for determination is the correctness legality, propriety and regularity of the proceedings, ruling and orders made by the learned trial magistrate on 8th April 2021, and whether they stand for reversal and setting aside. After hearing the application dated 22nd September 2021 the learned trial magistrate said inter alia;

All these witnesses pointed accusing figure at A1 as having a hand in what befell them indirectly as she had great influence in the council of the University which makes key decisions, having nominated the acting Vice Chancellor who took over from her at the university. With regards to A2, it is only Prof. Mohammed out of the five witnesses who alleged that he threatened him not to cooperate with investigators or face dire consequences. The rest of the accused persons (A3, 4 & 5) were never implicated in one way or another with interference, intimidation or harassment of the witnesses.

I have carefully considered what was said by the witnesses during cross examination and re-examination as highlighted hereinabove. The court has to merely be satisfied that there are substantial grounds for believing that there was a likelihood of interference with witnesses considering the relationship, especially of A1 and the witnesses. For A1, her position of influence with the council of the University has been cited and the prosecution has led facts of interference indirectly on account of her influence.

Taking into consideration the fact that some of the prosecution witnesses are university staff who are answerable to the council of the university in which A1 is alleged to have influence, it is not far-fetched for the prosecution to contend that they would most likely interfere with witnesses or conduct themselves in a manner likely to compromise the case if the orders sought herein by the prosecution are not granted. On the basis thereof, I am persuaded that the prosecution has placed material before the court which demonstrates actual or perceived interference and existence of a threat or threats to witnesses, more so those in the employment of the university.

For reasons aforesaid, I do find merit in the prosecution's application dated 22nd September 2020 and accordingly allow the same and hereby issue the following directions: -

1. That A1 and 2 not go to their former offices at the Maasai Mara University unless accompanied by a police officer. For avoidance of doubt this directive does not apply to A3, 4 and 5."
 2. ... (emphasis added)
7. It is the proceedings that led to this ruling, the ruling itself and its basis and the directions given by the learned magistrate that are the subject of this application.
8. The applicant, the respondent and the 3rd interested party filed Submissions. According to the applicant;
3. The Applicant further amended their Notice of Motion on 5th May 2022 wherein her co-accused persons, were enjoined as the 1st and 4th Interested Party".
 4. The genesis of the orders and ruling issued by the Magistrate Court dated 8th April, 2022 is the Prosecution's Notice of Motion Application dated 22nd September 2020 filed at the trial court seeking a review of the bond terms by granting further terms inter alia that the accused persons be denied access to their offices, not to contact or communicate with witnesses in any manner directly or through the University Council, Acting Vice Chancellor and or management of



Maasai Mara University and not to hold disciplinary meeting, summons and or dismiss from employment any of the witnesses in the matter.

5. The said Application was made on the grounds that the Applicant had directly or through proxies in an attempt to frustrate and intimidate the Prosecution's witnesses, used different avenues and tactics among which included threats to the employment of the prosecution witnesses by constant harassment, demotions, redeployments and dismissal.
6. The Applicant herein, through her replying affidavit dated 7th October 2020, lay bare the facts that she was not in any way involved in the interference of witnesses and that overall, the application was ambiguous and lacking in evidence to support the allegations contained therein.
7. It is the Applicant's case that the record of the Criminal Proceedings in the Chief Magistrate's Court in Nakuru are incorrect, illegal, improper and irregular. Therefore, the ruling and orders made therein on the 8th April 2022, holding inter alia that the Applicant was guilty or interfering with the prosecution's witnesses ought to be reversed and set aside.
8. The Applicant avers that unless this Honourable Court comes to her aid by issuing the orders sought, she will suffer prejudice and the proceedings in the subordinate court will continue to be conducted contrary to the principles of fair hearing and natural justice. As such, the Applicant asks this court to allow the Application herein."
9. The 3rd interested party's case was that pursuant to the application by the prosecution oral application that the persons who had allegedly been dismissed/redeployed at the behest of the accused persons be cross examined to determine the veracity of their allegations, the court allowed the an application for the cross examination of Dr. Samwel Ochola and Prof. Kitchie Magak and issued summons for their appearance as witnesses. However the matter proceeded without the 2 being cross examined, and the court somehow arrived at the conclusion that the applicant and the 3rd interested party were guilty of interfering with witnesses, and were not to visit the university unless accompanied by police officers.
10. It is this decision that both the applicant and 3rd interested party want reversed and set aside. Both set out the same issues for determination.
11. The application is premised on articles 50 on the right to fair trial and 25 (c) of the *Constitution* on the fact that the right to fair trial is among the fundamental rights and freedoms that shall not be limited.
12. The applicant also relies on Section 362 of the *Criminal Procedure Code* which provides for the power of High Court to call for records of the subordinate court;

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.

13. It was argued for the applicant that the law empowered the high court to intervene in any criminal proceedings to correct any manifest irregularities/illegalities, and to give appropriate directions. For this applicant cited *DPP v Chief Magistrate's Court Kiambu; Muktar Sama Olow & Another (IPs)* [2021] eKLR which cited Odunga J as he then was in *Joseph Nduvi Mbuvi v Republic* [2019] eKLR, *Bhavin Devji v Republic* [2020] eKLR citing the Supreme Court of India in *Veerappa Pillai v Remaan Ltd.*
14. It was argued that the learned trial magistrate allowed the prosecution to cross examine witnesses said to have been deployed or dismissed, at the behest of the applicant and 3rd interested party, yet failed or



ignored to call the authors of the letters complained of. That these witnesses whose evidence the court did not hear are the ones who would have confirmed whether or not the applicant had influenced them to write the letters that are said to have led to the impugned actions against that prosecutions witnesses. It is argued that this failure occasioned unfairness on the part of the court, and was irregular as in nay event court was bound by Section 150 of the [Criminal Procedure Code](#) to call those witnesses; The provision was cited and it states;

A court may, at any stage of a trial or other proceeding under this Code, summon or call any person as a witness, or examine any person in attendance though not summoned as a witness, or recall and re-examine a person already examined, and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case:

Provided that the prosecutor or the advocate for the prosecution or the defendant or his advocate shall have the right to cross-examine any such person, and the court shall adjourn the case for such time (if any) as it thinks necessary to enable the cross-examination to be adequately prepared if, in its opinion, either party may be prejudiced by the calling of that person as a witness.

15. Counsel relied on *Kulkana Otim v Republic* [1963] EA 257, cited by Ngugi, J as he then was, in *Stephen Mburu Kinyua v Republic* [2016] eKLR, where the Court of Appeal in Uganda, in considering Section 146 of the Ugandan *Criminal Procedure Code*, which is similar to our Section 150 of the [Criminal Procedure Code](#) stated that:

“It will be seen that the first part of the section confers a discretion, but under the second, if it appears to a judge that the evidence of a person is essential to the just decision of a case, there is a mandatory duty on a judge (if the witness has not been called) to call him himself...”

16. It was argued that had the court applied the principles required of a fair trial the court would have ensured these two witnesses appeared as they held the key as to whether the allegations made against the applicant and the 3rd Interested party were true or not. By failing to do so, the applicant was not accorded a fair hearing on that issue.
17. To emphasis this position the applicant’s counsel also relied on *Joseph Ndung’u Kagiri v Republic* (2016) eKLR citing *Natasha Singh v CB* (2013) 5 SCC 741 where the court stated:-

Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person’s right to fair trial be jeopardized.

18. It was further urged for the applicant that, the prosecution did not even cross examination her on her Replying Affidavit dated 7th October, 2020 yet she categorically denied their allegations of interfering with witnesses. That the court did not consider it in making its decision. It is for these reasons that the applicant argues the magistrate’s Ruling fell under Section 362 of the [Penal Code](#).
19. The 2nd part of the applicant’s submissions were superfluous as the court had already dealt with the issue of stay of proceedings.



20. For the 3rd interested party the argument was that the prosecution was bound to prove the allegations it made against the 3rd interested party. Counsel relied on *Peter Wafula Juma & 2 Others vs Republic* [2014] eKLR citing *Woolmington vs DPP* [1935] A.C. 462 pp 481. It was also argued that the prosecution was bound to ensure the attendance of any witnesses the defence expected them to call, unless the witness was absent for reasons beyond the control of the prosecution. See *John Kariuki Muiruri vs Republic* [2010] eKLR citing, *Hillary Bwire Wafula vs Republic* Criminal Appeal (UR) No. 8/1996.
21. It was also argued that the respondent was bound to prove that the applicant and 3rd interested party had interfered with witnesses and this could only have been proved by calling the witness who was alleged had been duly influenced by the Applicant and 3rd interested party to dismiss or redeploy other witnesses.
22. That the respondent failed to do so, and did not demonstrate any difficulty in obtaining their attendance, hence the finding of the court that the applicant and 3rd interested party had interfered with witnesses was improper, incorrect, irregular and illegal.
23. Counsel also argued that the respondent's position that the applicant and the interested party ought to have ensured the presence and attendance of the witnesses was misplaced.
24. That Article 25 of the *Constitution* provides for the underogable rights of every person, which include the right to a fair hearing. Citing *John Oroo Oyioka & Anor v IEBC* [2013] eKLR quoting *Waithaka & Anor v Republic* [1972] EA 184, where on appeal the court found that the trial court's refusal to hear the appellant's witness who was present in court was a violation of their right to put their defence and was fatal to their convictions, counsel argued that similarly the denial by the court of the evidence of Applicant and 3rd interested party to challenge the allegations against them was a serious breach of their right to fair hearing, rendering the decision illegal, incorrect and improper. Further that the orders made by the court infringed on their right to freedom, security and movement through the unnecessary restrictions. See *Ndegwa v Republic* [1985] eKLR. In conclusion the 3rd interested party argued that this court was empowered by Article 165 (6) and (7) of the *Constitution* Section 362 *Criminal Procedure Code* reverse and set aside the subordinate court's decision.
25. The 3rd Interested party urged the court to find that it is vested with the jurisdiction to exercise revision powers over the Honourable Magistrate's decision and cited *Director of Public Prosecutions vs Marias Pakine Tenkewa t/a Naresho Bar Restaurant* [2017] eKLR the Court gave limits of its revisionary jurisdiction thus:

“It is not a function purely vested to correct errors, mistakes and omissions of a subordinate court or tribunal. Secondly, where the subordinate court or tribunal has acted *ultra vires* of jurisdiction. Thirdly, where the subordinate court, person, authority, tribunal has exercised jurisdiction in a manner which has occasioned grave injustice or failure of justice.”

26. The 3rd interested party sought that the respondent be condemned to pay costs.
27. On its part the respondent through Mr. Momanyi set out one issue for determination;

Whether a trial court can set conditions on bail/bond granted to an accused person.

28. The respondent gave the following background;
 - i. The Applicant and the interested parties on 26th August 2020 were charged in Nakuru ACC No. 2 of 2020 with *inter alia* conspiracy to commit an offence of corruption Contrary to



Section 47A (3) as read with Section 48 ACECA, abuse of office contrary to section 101(1) as read with 102A Penal code, willful failure to comply with the law relating to management of public funds contrary to Section 45 (2) (b) as read with Section 48 and Stealing Contrary to Section 268 as read with Section 280 Penal Code.

- ii. As a result of the said offences a total of Kshs. 177,007,754/- was stolen from Maasai Mara University.
- iii. The Applicant and the Interested Parties were released on bond but the court did not set any conditions as regards their going back to their officers, deposit of their passports in court and/or interfering with witnesses.
- iv. On 10th September 2020 the Respondent filed an application in the trial court to vary/review the bond terms of the Applicant and the Interested Parties in light of the court not having set any conditions as regards their going back to their officers, deposit of their passports in court and also due to information from witnesses who were employees at Maasai Mara University indicating that they were being harassed and intimidated because of being Prosecution witnesses in the said criminal case.
- v. The applicant together with the interested parties made an application to have the witnesses mentioned in the prosecution's application be summoned so as to be cross examined based on the averments in the said application and on 30th October 2020 the trial court allowed the said application.
- vi. 5 prosecution witnesses were called on various dates and cross examined by the counsels for the Applicant and Interested Parties. Thereafter the said counsels sought to call the acting Vice Chancellor and the Chairman of the Council of Maasai Mara University so as to be questioned on the issue of the letters they wrote with regards to the redeployment and/or termination of employment of the prosecution witnesses.
- vii. The acting Vice Chancellor and the Chairman of the Council of Maasai Mara University never appeared before court on several occasions alleging either to not have been served with the summons, being engaged in official duties and/or having left employment at the University.
- viii. The acting Vice Chancellor and the Chairman of the Council of Maasai Mara University never appeared in court even though they were on various occasions served with summons by the Investigating Officer and/or informed by counsel watching brief for Maasai Mara University of their attendance being required before the trial court.
- ix. On 28th January 2022 after the counsel watching brief for Maasai Mara University informed the trial court that the acting Vice Chancellor and the Chairman of the Council had since left employment at the said university; counsels for the Applicant and the interested parties were agreeable to have the court deliver a decision on the said prosecution's application in light of the 2 university officials having failed to attend court on various occasions and also having left employment at the said university.
- x. The trial court delivered its ruling on the Prosecution's application on 8th April 2022 (hereinafter referred to as the said ruling) where it found that the Prosecution's application had merit and ordered that the applicant and the 2nd accused persons not to go to their former offices at Maasai Mara University without being accompanied by a police officer, that all Accused persons are not to get in touch with the prosecution's witnesses in a manner or through any persons, and that the University Council and/or management not to hold



disciplinary meetings, summon and dismiss from employment Prosecution witnesses based on matters touching on the case before court.

The respondent based its argument on Article 49(1) (h) of the *Constitution* on the power of the court to grant bail, and cited *Waititu vs Republic* (Petition 2 of 2020) [2021] KESC 11 (KLR) Anti-Corruption and Economic Crimes) (22 October 2021) (Judgement) the Supreme Court is paragraph 54 stated statedt in the exercise of discretion in granting bail the court must seek to strike a balance between protecting the liberty of the accused person and safeguarding the proper administration of justice.”

29. He also relied on the provisions of the Bail and Bond Policy Guidelines on the effective supervision of persons granted bail, the protection of victims, the interests of justice to protect the investigation and prosecution processes against interference by the accused persons.
30. Relying on *Waititu* above he argued that the court had power to give conditional bail, as the ruling was intended to assist the trial court in preserving the integrity of witnesses and their evidence and that in doing so the court took into account the circumstances of each of the accused persons as it gave different conditions for the applicant and the 3rd interested party.
31. That the applicant and 3rd interested party had not demonstrated how the exercise of discretion by the trial court in imposing reasonable conditions to their bail/bond terms was not judicious, correct, legal and regular so as to necessitate this Honorable Court to interfere with the same.
32. He urged the court to dismiss the application
33. The 1st interested party Prof. Simon Kasaine Ole Seno supported reported the application by the applicant. In his affidavit sworn on 23rd May 2022 he deponed that it was the prosecution who had filed a complaint in court. It was their duty to call the witnesses to support their case, the 2 witnesses, the authors of the letters complained about were the key determinants of the issue whether or not there had been influence on them to write the said letters or take the actions they did. Failure to avail the said witnesses amounted to failure to prove their allegations.
34. In his Submissions the 1st interested party relied on *Bukenya & Others vs Uganda* [1972] EA 549 where the court decided;

“where the evidence called is barely adequate the court may infer that the evidence of the uncalled witnesses would have tended to be adverse to the prosecution.”
35. I have carefully considered the submissions by counsel and the authorities cited. It is clear to me the issue is whether the application to take the proceedings leading to, and orders of the trial magistrate of 8th April 2021 through Section 362 of the *Criminal Procedure Code* is merited.
36. The impugned Ruling proceeded from the application filed by the prosecution on 22nd September 2020 seeking orders;
 - i. Directing the accused persons be denied access to the Maasai Mara University.
 - ii. Directing that the accused persons do not contact or communicate with the witnesses in any manner directly or through the University Council, management, their agents and/or proxies.
 - iii. Directing that the University Council, Ag. Vice Chancellor and/or management of Maasai Mara University do not hold disciplinary meetings, summons and/or dismiss from employment any of the witnesses in this matter on issues regarding this case pending its determination.



37. The prosecution sought the review of the accused person's bonds on the grounds inter alia, that their 22 witnesses were employees of Maasai Mara University;
- “That the accused persons have directly through their proxies in an attempt to frustrate and intimidate the prosecution's witnesses, used different avenues and tactics to this end. The witnesses have continually suffered intimidation and threats to their employment by constant harassment through demotions, redeployments as well as disciplinary processes.
- That the continued presence of the accused persons in office and/or use of proxies within the university to summon and or seek information from the witnesses during the pendency of this matter prejudices the prosecution case and these are compelling reasons in law to warrant variation or review of their bond terms.”
38. The affidavit in support of the application sworn by No. 95657 PC Silvance Origa expounded on these grounds, and annexed letters of dismissal, supervision and disciplinary letters against person they alleged were their witnesses. That they had sought the intervention of the Cabinet Secretary but despite his directive that the affected employees be reinstated the same was ignored. The applicant swore a Replying Affidavit. She denied each and every allegation in the application, she demonstrated that she was on leave all the along, and that she had also been issued with a letter of suspension. She deponed that all the while she was on leave she had not set foot in the university and had not communicated with any member of staff. She was not the signatory to the said letters.
39. What is clear from the foregoing is that the allegations made by the prosecution in seeking to have the accused person's bond reviewed were grave. The prosecution made the allegations and it was their burden to prove the same. The prosecution has put great weight on the fact that when the 2 witnesses failed to show up, all the parties were in agreement that the court could proceed to render its decision. The court proceeded to allow the application by the prosecution
40. The question is whether the mere agreement by parties that the court could proceed to make its decision took away the court's duty to consider the impact on the case for the prosecution their failure to avail the two key witnesses.
41. The answer to this is clearly no. It is evident that the court ought to have insisted on the presence of the 2 key witnesses for prosecution, failure to which the prosecution application would stand unsupported. This is more so because the applicant was not heard. Had the court considered her affidavit it would have been evident that the prosecution's application needed the evidence of the two absent witnesses as the applicant was also a victim of the same process that saw some of the staff receive letters of suspension/interdiction.
42. The ruling placed great weight on the allegations of the great influence the applicant had on the University Counsel and the acting vice Chancellor. There was no evidence of this before the court to enable it draw the conclusion it did that all was required was to “merely be satisfied that there are substantial grounds for believing that there was a likelihood of interference with witnesses considering the relationship, especially of A1 and the witnesses. For A1, her position of influence with the council of the University has been cited and the prosecution has led facts of interference indirectly on account of her influence”.
43. The prosecution merely cited the alleged influence of the applicant. It was not established. Neither was it established that she had indirectly influenced the decisions made by the University. The court would have settled these issues by requiring the presence of those two as per Section 150 of the *Criminal Procedure Code*. Having not heard them or the applicant the court could not have arrived at a correct



decision because the proceedings were irregular. Basing the conditions of bond on the challenged averments of the prosecution, and unsupported and unproven allegations against the applicant and 3rd interested party was improper and incorrect.

44. With respect to the respondent's submission. This is not a case about whether the court has power to impose conditional bail, this is a case of whether the court followed proper processes/applied the proper principles in arriving at the said decision.
45. The review of the bond terms per se by the subordinate court was not illegal as the court empowered to review bond terms and to impose conditions that may be necessary to the circumstances of the case
46. However, it is my finding that the proceedings were irregular for not calling the two witnesses.
47. I therefore find and hold that the finding by the subordinate court on the 8th April 2021 that the applicant and the 3rd Interested party were guilty of interfering with witnesses by influencing the decisions of the University with respect to its employees who are witnesses in the case before the subordinate court was incorrect and improper in the circumstances.
48. I find that the complaint by the applicant and the 3rd Interested Party has merit and that finding against them be and is hereby set aside.
49. The subordinate court is at liberty to revise the bond terms on any other established grounds
50. Each party to bear its own costs.
51. Orders accordingly.

DATED, SIGNED AND DELIVERED THIS 23RD DAY OF JANUARY 2023.

MUMBUA T. MATHEKA,

JUDGE.

C/A Jennifer

For state:

Musyoka Murambi & Associates

A.S. Kuloba & Wangila Advocates

Nchoe, Jaoko & Co. Advocates

