



**Kithinji v Republic (Miscellaneous Criminal Application E123 of 2022)  
[2023] KEHC 83 (KLR) (Crim) (19 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 83 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
MISCELLANEOUS CRIMINAL APPLICATION E123 OF 2022  
JM BWONWONG'A, J  
JANUARY 19, 2023**

**BETWEEN**

**JAMES NTHUKU KITHINJI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant is an accused in Kibera Chief Magistrate's Court Criminal Case No. 743 of 2018. On 24<sup>th</sup> May 2022, this court issued orders staying further proceedings in the applicant's aforementioned criminal case pending the hearing and determination of his application for transfer, which is yet to be determined by this court.
2. The application was filed vide his notice of motion dated 3<sup>rd</sup> October 2022. The main prayers sought in the application are for the court to stay any proceedings in the trial court including progress updates and/or mentions until the determination of his application for transfer is heard and determined.
3. The application is supported by the grounds set out on the face of the notice of motion and reiterated in his affidavit dated 3<sup>rd</sup> October 2022, sworn by the applicant. The grounds raised are as follows. Pursuant to the issuance of the stay orders by this court, the applicant served certified copies of the said orders upon the Chief Magistrate's court registry. The same was acknowledged by the trial court. However, the trial court insisted on fixing the matter for mention for the applicant/accused to provide status reports. That the said mentions are in violation of the order of this court, which stayed all proceedings before the subordinate court. The applicant in his affidavit avers that there are no compelling reasons to require the trial court to get status reports from the applicant, when there are orders of stay, which are currently in force. He has urged the court to issue the orders sought.



### **The respondent's grounds of opposition**

4. In response to the application, the respondent filed grounds of opposition dated 20<sup>th</sup> October 2022. The main grounds raised are that the application lacks merit, is ill-conceived and is an abuse of the court process. The applicant has not demonstrated any special or unusual circumstances to warrant the application to be allowed. The orders sought are discretionary and the applicant has failed to demonstrate that he is deserving of the orders sought.

### **The applicant's written submissions**

5. The applicant submitted that the legitimacy and authority of courts are upheld by obeying court orders and directions. Further the exercise of judicial authority is guided by the principles specified under articles 10, 159 (2) and 232 of *the Constitution* of Kenya. He has argued that the trial court has placed him in the horns of an implacable dilemma by compelling him to appear in court and participate in proceedings in the disobedience of a court order. He has urged the court to grant the orders sought.

### **The respondent's written submissions**

6. Ms. Edna Ntabo, learned prosecution counsel submitted that there was nothing wrong with the procedure adopted by the learned Magistrate in setting the mention dates for the accused to give updates. She argued that the trial court should not be held at ransom by the orders of stay of proceedings. She has submitted that the application lacks merit and should be dismissed.

### **Issues for determination**

7. I have considered the pleadings, the response and the applicable law. As a result, I find that the issue for determination is whether the applicant has made out a case for the grant of the orders sought.

### **Analysis and determination.**

8. The purpose of a stay order in criminal proceedings is to stop the proceedings in the lower court pending the determination of the application in the High Court. It beats the purpose of the stay orders to have the matter mentioned for whatever reasons, which require the accused to attend court and participate in one way or another. The stay order in issue was meant to stop all proceedings including mentions before the subordinate court. This will stop the accused from incurring travel expenses to and back from the court house. This will also enable the trial court to concentrate on other matters, thus saving in terms of judicial resources including time and personnel.
9. Should the accused's application for transfer succeed before this court, then the proceedings in the lower court would amount to naught, thereby exposing the parties and the court to a waste of judicial time and other resources.
10. Consequently, all proceedings pending before the Chief Magistrate's court sitting in Kibera in Criminal Case No. 743 of 2018 including mentions are hereby stayed pending the hearing and determination of the accused's application for transfer before this court.

**RULING SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 19<sup>TH</sup> DAY OF JANUARY 2023.**

**J M BWONWONG'A**

**JUDGE**

**In the presence of-**



Mr. Kinyua: Court Assistant

The applicant in person.

Mr. Kiragu for the respondent.

