



Petroleum Institute of East Africa v Republic & another (Criminal Revision E167 of 2023) [2023] KEHC 21261 (KLR) (Crim) (28 July 2023) (Ruling)

Neutral citation: [2023] KEHC 21261 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E167 OF 2023
DR KAVEDZA, J
JULY 28, 2023**

BETWEEN

PETROLEUM INSTITUTE OF EAST AFRICA APPLICANT

AND

REPUBLIC 1ST RESPONDENT

IBRAHIM MOHAMMED OSMAN 2ND RESPONDENT

(Being an application revision of the ruling and order of C.M Njagi (PM) delivered on 28th February 2023 in Milimani Magistrate's Court Criminal case no. 303 of 2020 Republic vs Abdi Kassim Abdi & 6 others)

RULING

1. The application for determination is dated March 6, 2023, filed pursuant to articles 40, 50 (1), 165 (6) of the [Constitution of Kenya](#), sections 177, 362, and 364 of the [Criminal Procedure Code](#), sections 4, 9, & 19 of the [Victim Protection Act](#) and Regulations 26 (1) of the [Petroleum \(Liquefied Petroleum Gas\) Regulations, 2019](#). In the main, the applicant prayed that this court vacates the orders of release of gas cylinders to the 2nd respondent issued by the trial court on February 28, 2023 at Milimani Magistrate's Court Criminal Case No 303 of 2020 Republic vs Abdi Kassim Abdi & 6 others. The applicant also prayed that the respective gas cylinders be released back to their respective brand owners.
2. The application is premised on the grounds on the face thereof and supported by an affidavit of a similar date sworn by Clive Cetewayo Mutiso. The averments made are that the applicant is the complainant in the case against the 2nd respondent before the trial court. On January 24, 2023, the prosecution made an application to withdraw the charges against him under section 87 (a) of the [Criminal Procedure Code](#). The charges against him were consequently withdrawn. On the same day, he made an application



for the release of the exhibits. The application was opposed by the applicant herein. On January 28, 2023, the court ordered the LPG Gas cylinders to be released to the 2nd respondent.

3. It was further stated the 2nd respondent did not adduce any proof of ownership of the said LPG Cylinders. On the other hand, the applicant availed trademark certificates belonging to its members as proof of ownership of the said cylinders. It was contended that the 2nd respondent is neither the proprietor nor the brand owner of the said cylinders. It was averred that the order of the trial magistrate was incorrect, illegal, irregular, and improper. He urged the court to set aside the orders of the trial court and that the LPG Gas cylinders be transmitted to their respective brand owners.
4. In response, the 1st respondent filed grounds of opposition dated 24th March 2023. The grounds raised are that the applicant lacks the *locus standi* to institute the present application. The 1st respondent has neither initiated nor authorized the instant application. The participation of the victim in the instant application should be determined on a case-to-case basis. The application is defective and should be dismissed.
5. Ibrahim Mohamed Osman, the 2nd respondent and a director of Proto Energy Limited filed a replying affidavit dated March 29, 2023. He deponed that he is an owner of some of the exhibits released by the trial court on 28th February 2023. He contended that he attached proof of ownership of the exhibits which were released. The application for release of the exhibits was unopposed by the investigating officer who was present in court. The application before court is meant to frustrate his business and he will be greatly prejudiced if it is allowed. He urged the court to dismiss the application.

Applicant's Written Submissions.

6. The applicant did not file written submissions despite being given an opportunity to do so.

1st Respondent's Submissions.

7. The 1st respondent submitted that the overall object of the [*Criminal Procedure Code*](#) and the [*Office of the Director of Public Prosecutions Act*](#) is to safeguard public interest in the administration of justice. If individual litigants override the DPP in pursuit of justice, the floodgates of chaos will be opened. The supreme court case of [*Joseph Lendrix Waswa vs Republic*](#) [2020]eKLR was cited in support. It was argued that victim participation is confined to the trial court. It was submitted that the applicant being a complainant in the case before the trial court had no locus to file the present application.

2nd Respondent's Submissions.

8. The 2nd respondent submitted that the prosecution acted within the law in withdrawing the case against him. Further, that application to withdraw the charges were unopposed and as such, the present application is an afterthought meant to frustrate him. He urged the court to dismiss the same.

Issues For Determination.

9. Having considered the application, the responses, and the written submissions, the issues for determination are:
 - i. Whether the applicant has *locus standi* to file the present application.
 - ii. Whether the applicant has met the threshold for grant of the revisionary orders sought.



Analysis and Determination.

10. In this matter, the 1st respondent has filed the objection contesting this court's jurisdiction to determine the application; the applicant's *locus standi* to bring an application. These are points of law which if successful would dispose of the application. Other grounds as to whether the trial court orders were merited are in my view contested facts which can only be determined after interrogation of the subordinate court's record. This is a process that is also dependent on this court's discretion under Sections 362 and 364 of the [Criminal Procedure Code](#).
11. As to whether the applicant have *locus standi*, the term *locus standi* refers to the right to address a court of law. It signifies a right to be heard and that a person must have a sufficiency of interest to sustain his standing to sue in a Court of law. This is stated in the case of [BV Narayana Reddy vs State of Kamataka Air](#) (1985) Kan 99, 106 (the [Constitution](#) of India, ARD 226) cited in [Law Society of Kenya vs Commissioner of Lands & 2 others](#) [2001] eKLR by Ombija J. *locus standi* goes to the root of the case and jurisdiction of the court since a court cannot hear a party who does not have audience and such case would be void ab initio. The applicant has brought the revision in their capacity as complainants in the lower court criminal case. This fact is not disputed by the respondents. The facts also point out that the applicants moved to this court after the trial court ruled against them in an application for certain orders. The applicant is not a stranger but is a key party with respective rights under the [Victim Protection Act](#), 2014.
12. Section 4 of the Act enacts that the victim has the right to present any information that is relevant to the proceedings. The Section ensures that the victim has a right to be heard during pendency of the trial and up to the sentence stage. Section 4 (2) (b) of the [Act](#) provides as follows:
 - (2) Subject to subsection (1), a court, administrative authority or person performing functions under this Act shall ensure that—
 - (a);
 - (b) Every victim is, as far as possible, given an opportunity to be heard and to respond before any decision affecting him or her is taken;
13. It is also trite that the right is enforced further to our constitutional edict to ensure fair hearing and administrative action. The rights under the Act are an independent right from the State or the offender as it allows the victims to address the Court in their own capacity. It is also trite that any aggrieved party may move to a higher court for revision pursuant to Section 362 of the [Criminal Procedure Code](#). The applicants' right to approach this court are, therefore, not limited by any law. Hence, the 1st Respondent's submissions that the applicant required his consent is unmerited and misconceived.
14. On the merits of the application, I have also perused the impugned ruling of the trial court delivered on February 28, 2023. The trial court allowed his prayer for the release of the LPG Gas Cylinders to him having proved ownership. The application was not opposed by CPL Andrew Odero, the investigating officer who was present in court. The case against the accused person was withdrawn under section 87 (a) of the [Criminal Procedure Code](#) (CPC).
15. The key issue for consideration is the question whether the proceedings of the lower court and the ruling can be faulted in terms of correctness, legality, or propriety.
16. From the record, the trial court considered the application, and the response thereto. It is manifest from the foregoing that the learned magistrate reached his decision after giving due consideration to the respective positions taken by the parties before him. The applicant was therefore given an



opportunity to articulate its case through the prosecution and the investigating officer before the ruling was delivered.

17. The applicant has attempted to challenge the application on the merits of the decision arrived at by the learned trial magistrate. My considered view however is that, when it comes to perceived errors in the appreciation of the facts of a particular case and the application of the law to those facts, the trial magistrate's decision can only be competently challenged on appeal.
18. The upshot is that I find nothing in the record of the subordinate court that shows an illegality, irregularity, or impropriety in the orders made by the court. Therefore, I find the application for revision dated March 6, 2023, completely devoid of merit. The same is hereby dismissed.
19. It is so ordered.

RULING DATED AND DELIVERED VIRTUALLY THIS 28TH DAY OF JULY 2023

D. KAVEDZA

JUDGE

In The Presence Of:

Ms Chege for the State.

Mr. Theuri for the applicant.

Ms. Farida h/b for Mr. Nyaribo for the 2nd respondent.

Joy C/A

