



**Karuguchu v Mwangi (Miscellaneous Civil Case 7 of 2023)
[2023] KEHC 20959 (KLR) (26 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20959 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
MISCELLANEOUS CIVIL CASE 7 OF 2023
CW GITHUA, J
JULY 26, 2023**

BETWEEN

PETER KARIUKI KARUGUCHU APPLICANT

AND

STEPHEN WAITHAKA MWANGI RESPONDENT

RULING

1. The applicant, Peter Kariuki Karuguchu moved this court through a Notice of Motion dated February 7, 2023 seeking that the proceedings in Murang'a CMCC No 400 OF 2009 be stayed pending reversal of the orders issued by the lower court dated January 18, 2023 and that the court be pleased to reverse the said orders and direct the lower court to admit evidence in the police file in respect of the accident subject matter of the trial before that court. The applicant also prayed that costs of the application be borne by the respondent.
2. The application is anchored on grounds that in the ruling dated January 18, 2023, the lower court refused to admit in evidence the aforesaid police file thereby shutting out crucial evidence the applicant intended to rely on in his defence; that the impugned order for that reason prejudiced the applicant as he would be condemned unheard contrary to the rules of natural justice. In his supporting affidavit, the applicant deposed that he was invoking this court's supervisory jurisdiction in asking the court to reverse the orders of the trial court issued on January 18, 2023.
3. The application is contested by the respondent. In a replying affidavit sworn on his behalf on February 20, 2023, his learned counsel Mr. Jeremiah Mbutia deposed that the application was utterly incompetent and bad in law as it amounted to an improper invocation of this court's supervisory jurisdiction. Further, counsel averred that the subordinate court was seized of jurisdiction to try cases before it and to make such orders as are necessary for the conduct of business before it; that moreover, the applicant did not avail to the trial court the witness who would have produced the police file and



- he closed his case after he was denied an adjournment; that instead of closing his case, the applicant should have appealed against the trial court's order if he was aggrieved by it.
4. The application was prosecuted by way of written submissions. Those of the applicant were filed by his advocate Mr TM Njoroge on June 12, 2023 while those of the respondent had been filed earlier on June 6, 2023 by the firm of JN Mbuthia & Company Advocates.
 5. After carefully considering the application and the rival submissions made on behalf of the parties, I agree with the submissions made by learned counsel Mr Mbuthia that the application was incompetent and lacked merit given that it sought to invoke the general supervisory jurisdiction of the High Court over subordinate courts presumably under Article 165 (6) of the Constitution (since this was not expressly stated in the application) while citing Section 3A of the Civil Procedure Act which provides for the courts inherent jurisdiction or power to make orders that are necessary for the ends of justice or to prevent abuse of its process. The inherent power donated to courts under Section 3A of the Civil Procedure Act is not a preserve of the High Court. It is bestowed on all courts including the subordinate courts and the applicant did not therefore have to file an application to this court in order to invoke that power.
 6. Secondly, the supervisory jurisdiction of the High Court over subordinate courts and tribunals bequeathed to the court by Article 165 (6) of the Constitution of Kenya 2010 should not be invoked by litigants as a matter of course to challenge decisions made routinely by subordinate courts in the exercise of their discretion in the disposal of cases properly before them. It should be invoked in weighty matters that exceed the jurisdiction of the lower court and which, if no intervention is made by the High Court would cause grave prejudice to the applicant and may lead to a miscarriage of justice. It should also not be invoked to impugn the merits of an order made by the lower where alternative remedies exist.
 7. As correctly stated by Mativo, J (as he then was) in Republic V Chief Magistrate's Court at Milimani Law Courts; Director of Public Prosecutions & 2 others (Interested Parties) Ex-parte Pravin Galot (2020) eKLR which has also been cited by the respondent, the general supervisory jurisdiction of the High Court under Article 165(6) of the Constitution should be used most sparingly in appropriate cases in order to keep subordinate courts and tribunals within the bounds of their authority and to ensure that they perform their duties in a legal manner. In the words of Mativo, J which I entirely agree with "..... this power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the court or tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice where grave injustice would be done unless the High Court interferes...."
 8. In this case, the applicant has only claimed that the trial court erred in refusing to admit into evidence a police file containing critical evidence he intended to use in his defence. The applicant has not claimed that the trial court acted outside its jurisdiction and made an order that would cause him grave injustice if this court did not intervene in the manner sought.
 9. From the material placed before the court, it is apparent that the applicant was basically challenging the merits of the trial court's decision refusing to grant him an adjournment which is a decision every trial court is entitled to make in its discretion on the basis of facts and circumstances of the case before it. Instead of filing the instant application, the applicant ought to have applied to the trial court for review of the assailed order under Order 45 of the Civil Procedure Rules (CPR). Besides, the applicant still had an option of filing an appeal to this court if he so wished after the trial court concluded the case before it.



10. In my view, entertaining an application such as the one filed in this case would be tantamount to allowing the High Court to be used as a tool for micromanaging the lower court in the adjudication of disputes properly before it which would not augur well for the administration of justice.
11. Before I pen off, I wish to decry the casual manner in which the applicant approached this court. Though challenging the validity of an order made by the lower court, the applicant did not find it necessary to avail to this court a copy of the impugned order or the ruling or proceedings in which it was issued.
12. For all the foregoing reasons, I am satisfied that this application is devoid of merit and it is hereby dismissed with costs to the respondent.

It is so ordered.

C. W. GITHUA

JUDGE

DATED, SIGNED and DELIVERED VIRTUALLY at NAIROBI this 26th day of July 2023.

In the presence of:

Mr. Mbuthia for the Respondent

No Appearance for the Applicant

Mr. Quineteen Court Assistant

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Murang'a High Court Misc. Civil Case No 7 of 2023 – Peter Kariuki Karuguchu -Versus- Stephen Waithaka Mwangi

