



**Suri v Technoservice Limited & another; Nokia Corporation & 2 others (Interested Parties)  
(Criminal Revision E099 of 2021) [2023] KEHC 21912 (KLR) (Crim) (18 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21912 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL REVISION E099 OF 2021  
K KIMONDO, J  
AUGUST 18, 2023**

**BETWEEN**

**RAJEEV SURI ..... APPLICANT**

**AND**

**TECHNOSERVICE LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**THE CHIEF MAGISTRATES COURT ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**NOKIA CORPORATION ..... INTERESTED PARTY**

**ROSCHIER ATTORNEYS LIMITED ..... INTERESTED PARTY**

**AAPO SAARIKIVI ..... INTERESTED PARTY**

**RULING**

1. The applicant, Rajeev Suri, prays for stay of proceedings pending the hearing and determination of an interlocutory appeal filed in the Court of Appeal at Nairobi in Criminal Appeal Number E007 of 2021.
2. The background may be summarized as follows: The 1<sup>st</sup> respondent instituted a private prosecution against the applicant and the interested parties at the Chief Magistrates Court at Nairobi (the 2<sup>nd</sup> respondent) in Milimani Criminal Case 171 of 2021. The complainant was aggrieved by the “illegal” procurement and use of its confidential tax information and company registry records in an international Judicial Tribunal in ICC Case 23153/FS Technoservice Limited v Nokia Corporation.



3. Prior to the prosecution, and to be precise on December 8, 2020, the learned trial magistrate (E Kimilu, PM), in a considered ruling, granted leave to the complainant to commence the private prosecution in Miscellaneous Application Number 4465 of 2019.
4. On January 20, 2021, the lower court (DM Ndungi, PM) approved the charge sheet and set directions for January 27, 2021. The trial court later fixed the taking of plea for April 28, 2021.
5. On April 22, 2021, the applicant sought for revision at the High Court seeking in the main to stay the criminal proceedings and to set aside the order requiring him to appear to take plea. The revision is still pending before the High Court. For that reason, I decline the invitation to comment on its merits or to delve any deeper into the impugned criminal prosecution.
6. I will now return to the Notice of Motion at hand which is dated June 29, 2021. The facts are fairly straight forward. By an application dated June 8, 2021, the 1<sup>st</sup> respondent applied for recusal of the High Court Judge (Githua J) on various grounds including bias. On June 10, 2021, and before hearing the motion, the learned Judge, suo motu, recused.
7. The applicant now contends that the learned judge should not have recused in that manner; or, that there were insufficient grounds to do so. Like I stated, the applicant consequently lodged the interlocutory appeal at the Court of Appeal at Nairobi in Criminal Appeal E007 of 2021. He now seeks stay of this revision pending the determination of his appeal.
8. The applicant relied largely on written submissions dated July 19, 2023, a list of precedents and a Notice of Preliminary Objection of even date. At the hearing of the motion on July 31, 2023, the 1<sup>st</sup> respondent sought to have the written submissions and Preliminary Objection struck out for late filing. By a considered ruling on the record, I found that the documents were properly on the record.
9. The applicant's motion is supported by the 1<sup>st</sup> to 3<sup>rd</sup> interested parties. It is however strenuously opposed by the 1<sup>st</sup> respondent through a replying affidavit sworn by Bulent Gulbahar on May 30, 2023. There are also written submissions dated 11th July , 2023 together with a bundle of authorities.
10. In a synopsis, the 1<sup>st</sup> respondent submitted that there is no arguable appeal; that the recusal of Githua J cannot be cured by any practical order from the Court of Appeal; that the judge is no longer seized of the matter; and, that in all the circumstances of this case, the motion is a clever stratagem to delay the proceedings to the detriment of justice.
11. I should point out that the applicant has raised a preliminary objection to the replying affidavit sworn by Bulent Gulbahar on the grounds that it was sworn outside the commonwealth and was not properly "authenticated or serialized by a notary public". I will comment about the matter shortly.
12. On July 31, 2023, I heard further arguments from the disputants.
13. I take the following view of the matter. At the root of these proceedings is the original request for criminal revision. By dint of section 365 of the Criminal Procedure Code, no party has a right to be heard either personally or by an advocate before the High Court when exercising its powers of revision.
14. However, when the matter first came before the High Court (Githua J) on April 22, 2021, the learned judge directed the revision to be served and called for the original lower court file. The discretion exercised by the learned judge to hear the parties has led to multiple interlocutory applications which have unfortunately clogged the determination of the main revision. In the result, neither the original revision nor the criminal charge in the lower court is proceeding. The present motion for stay must thus be viewed through those lenses.



15. The preliminary objection on the validity of the replying affidavit is unmerited for the following reason: It would require the court to delve into the contested fact whether one Tamysyn Mileham, who the applicant admits is a solicitor in England and Wales, is a notary public. On the face of it, he commissioned the affidavit in Istanbul, Turkiye. True, there is no formal seal affixed. I may also take judicial notice that Turkiye is not a commonwealth country. But the point to be made is that a preliminary objection should be centered on a pure point of law. *Mukisa Biscuit Manufacturing Company v West End Distributors Ltd* [1969] EA 696.
16. The grounds upon which a judge should recuse are well settled. It will however be the true province of the Court of Appeal in Criminal Appeal E007 of 2021 to interrogate whether Githua J properly recused herself from this matter. For instance, the applicant submitted before me that it is a matter of “great public importance that touches on the fundamental pillars of the rule of law....whether a judge ought to listen to a recusal application or without hearing it, recuse themselves”. Those arguments and some authorities cited by the applicant are best left to the appellate court. The less I say about it, the better.
17. But I can safely state that on the basis of the materials before me, I find that the appeal is not arguable for two main reasons. Firstly, and like I stated, the learned judge, without expounding, recused herself for personal reasons or because she was uncomfortable handling the matter. The learned judge has since been transferred out of Nairobi. I remain highly doubtful that the superior court can command the learned judge to return to formally hear the motion that called for her recusal or to now conclude this case. I say that very guardedly and without making a finding.
18. Secondly, it is not lost on me that the applicant is seeking to stay his own revision in order to pursue the interlocutory appeal at the Court of Appeal. At the hearing of this motion, learned counsel for the applicant, Mr Kanja, informed me that directions have not been taken and no date has been given by the Court of Appeal since the year 2021. It is not his fault. But it means that granting a stay now will lead to a further and an indeterminate delay. I have already alluded to the history of this litigation and the deferments caused by interlocutory applications by various parties.
19. Turning to the other limb of the motion, I am not satisfied that unless the stay is granted, the appeal will be rendered nugatory; or, that the applicant will be unduly prejudiced. I also remain alive that stay of criminal proceedings should only be granted sparingly and in the clearest of cases. I am not confident that this is such one case. I am well guided by the Supreme Court in *Joseph Lendrix Waswa v Republic*, Supreme Court Petition No 23 of 2019 [2020] eKLR. See also *Thomas Patrick Gilbert Cholmondeley v Republic*, Court of Appeal, Nairobi, Criminal Appeal 116 of 2007 [2008] eKLR.
20. For all those reasons, the applicant’s Notice of Motion dated June 29, 2021 is devoid of merit and is hereby dismissed.

It is so ordered.

**DATED, SIGNED AND DELIVERED THIS 18<sup>TH</sup> DAY OF AUGUST 2023.**

**KANYI KIMONDO**

**JUDGE**

**Ruling read virtually on *Microsoft Teams* in the presence of-**

Mr. Kanja for the applicant instructed by Anjarwalla & Khanna LLP

Mr. Gulbahar for the 1<sup>st</sup> respondent.

Mr. Taib for the 1<sup>st</sup> interested party.



Ms. Wanyoike holding brief for Mr. McCourt for the 2<sup>nd</sup> and 3<sup>rd</sup> interested parties.

