



**Directline Assurance Co Ltd & 3 others v Inspector General of Police  
& 3 others; Kiarie & 13 others (Intended Accused) (Criminal Revision  
E115 of 2022) [2022] KEHC 13527 (KLR) (Crim) (5 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 13527 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL**

**CRIMINAL REVISION E115 OF 2022**

**CW GITHUA, J**

**AUGUST 5, 2022**

**BETWEEN**

**DIRECTLINE ASSURANCE CO LTD ..... 1<sup>ST</sup> APPLICANT  
ROYAL MEDIA SERVICES LTD ..... 2<sup>ND</sup> APPLICANT  
ROYAL CREDIT LTD ..... 3<sup>RD</sup> APPLICANT  
SAMUEL KAMAU MACHARIA ..... 4<sup>TH</sup> APPLICANT**

**AND**

**INSPECTOR GENERAL OF POLICE ..... 1<sup>ST</sup> RESPONDENT  
DIRECTOR OF CRIMINAL INVESTIGATIONS ..... 2<sup>ND</sup> RESPONDENT  
DIRECTOR OF PUBLIC PROSECUTIONS ..... 3<sup>RD</sup> RESPONDENT  
ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**JANICE TERESA WANJIKU KIARIE ..... INTENDED ACCUSED  
VICTOR BLASCO WIJENJE ..... INTENDED ACCUSED  
JANUS LTD ..... INTENDED ACCUSED  
HARBOR CAPITAL LTD ..... INTENDED ACCUSED  
KEVIN MC COURT ..... INTENDED ACCUSED  
SURE INVEST LTD ..... INTENDED ACCUSED  
JAMES GACHOKA ..... INTENDED ACCUSED  
TRIAD NETWORKS LTD ..... INTENDED ACCUSED**



**GORDON RADIER WERE ..... INTENDED ACCUSED**  
**AKM INVESTMENT LLD ..... INTENDED ACCUSED**  
**STENNY INVESTMENT PTY LTD ..... INTENDED ACCUSED**  
**JOHN MAONGA ..... INTENDED ACCUSED**  
**ENID MURIUKI ..... INTENDED ACCUSED**  
**WINNIE JUMBA ..... INTENDED ACCUSED**

## **RULING**

1. The five applicants herein approached this court through an originating notice of motion dated June 30, 2022 filed under a certificate of urgency on July 5, 2022. The motion sought revision of several orders made by the lower court in Milimani Chief Magistrate's Court Misc Appln No 2754 of 2021 including the ruling dated February 28, 2022.

The applicants also sought stay of further proceedings in the lower court and orders that an application dated August 20, 2021 be heard by a magistrate other than hon Z Abdul.

2. When the originating motion came up for mention for directions on July 27, 2022 and after I gave directions on its disposal, learned counsel for the applicants mr Kamau Kuria sc applied for stay of proceedings in the lower court pending further orders as sought in prayer 4 of the motion.
3. The applicants' prayer for stay was supported by learned state counsel mr Ngumbi who appeared for the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> respondents but was vehemently opposed by learned prosecuting counsel ms Oduor and all learned counsel representing the fourteen intended accused persons (hereinafter referred to as ia persons).
4. In her brief submissions, ms Oduor submitted that if the stay orders were not granted, the applicants will not suffer any prejudice since even if the lower court proceeded with the hearing, this court will eventually pronounce itself on everything that will have transpired before the court.
5. Learned counsel for the 10<sup>th</sup> ia person ms Wambugu who also held brief for ms Jan Mohamed SC for the 1<sup>st</sup> and 3<sup>rd</sup> ia persons submitted that though prayer 4 was coached as an interim order, it was a final order as it was one of the prayers in the originating motion. Further, counsel contended that the applicants will not suffer any prejudice if stay was not granted and that in any event, it is the applicants who dragged the ia persons to court and they cannot now seek to stay hearing of their application.

Learned counsel for the second ia person on his part concurred entirely with the submissions made by ms Wambugu.

6. In his submissions, learned senior counsel mr. kiragu kimani for the 5<sup>th</sup> – 9<sup>th</sup>, 12<sup>th</sup> and 14<sup>th</sup> ia persons besides urging me to find that the applicants were not likely to suffer any prejudice if the prayer for stay was not granted argued that the applicants were abusing the court process by seeking stay of the lower court's proceedings five months after the impugned ruling was delivered; that the prayer for stay was made to suit the applicants' convenience and was not in the pursuit of justice considering that it was made after the trial court ruled against their application; that therefore the application ought to be dismissed.
7. On her part, Ms Ndumia learned counsel for the 11<sup>th</sup> ia person associated herself with the submissions made by the counsel representing the other ia persons. In addition, she contended that if the



application for stay was allowed, the ia persons' right to raise issues relating to matters the applicants had allegedly failed to disclose to this court would be infringed.

8. In his riposte, mr. Kamau Kuria sc invited the court to note that the applicants' motion invoked the court's supervisory and revisional jurisdiction which empowers the court to give directions or orders aimed at ensuring that proceedings in lower courts were conducted in accordance with the law; that if stay was not granted, the ia persons will be allowed to participate in the proceedings for leave to institute private prosecution against them which was against the law.
9. I have considered the prayers in the applicants originating motion alongside the prayer for stay of proceedings in the lower court as well as the oral submissions made by each learned counsel in support and in opposition to the aforesaid prayer. The lower court's original record was availed to this court and I have had an opportunity of reading through it. Having done so, I find that the ruling impugned by the applicants was delivered on January 28, 2022 and not February 28, 2022 as stated in the originating motion.
10. Be that as it may, my perusal of the ruling confirms that the learned trial magistrate allowed all the ia persons to participate in the application filed by the applicants dated August 20, 2021 which sought leave to institute private prosecution against them. It is the applicants' contention that the learned trial magistrate erred in law in allowing the ia persons to participate in the aforesaid application which error this court should correct in the exercise of its revisional jurisdiction.
11. After considering the parties' rival submissions, I find that if the prayer for stay is not granted, the lower court will continue with its proceedings with the participation of the ia persons before the applicants have had an opportunity to ventilate their grievances in the originating motion. If the hearing in the lower court proceeded, it is likely that the applicants will suffer prejudice as most prayers in their application may be rendered nugatory.
12. Secondly and most importantly, refusal to grant the stay sought may lead to a situation where there will be concurrent proceedings before this court and the lower court which would not only be inappropriate but may create confusion which is likely to undermine the administration of justice.
13. Considering that I have already given directions on the hearing of the originating motion aimed at expediting its disposal, it is my view that the interests of justice requires that this court pronounces itself on the validity or otherwise of the impugned ruling before the lower court can continue with its proceedings.
14. For the foregoing reasons, I find merit in the applicants' prayer and it is hereby allowed on terms that the proceedings in the lower court are hereby stayed pending determination of the applicants' originating motion.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5<sup>TH</sup> DAY OF AUGUST 2022.**

**C. W. GITHUA**

**JUDGE**

**In the presence of:**

Mr. Kamau Kuria SC for the applicants

Mr. Ngumbi for the 1<sup>st</sup>, 2<sup>nd</sup> & 4<sup>th</sup> respondents

Ms Ntabo for the 3<sup>rd</sup> respondent



Ms Sirawa h/b for Mr. Kiragu Kimani for the 5<sup>th</sup>-9<sup>th</sup>, 12<sup>th</sup> & 14<sup>th</sup> ia persons

Ms Ndumia for the 11<sup>th</sup> ia person

Mr Kihanga for the 2<sup>nd</sup> ia person

Mr Kabu for Ms Wambugu for the 10<sup>th</sup> ia person

Ms Wanjiku h/b for Ms Jan Mohamed, SC for the 1<sup>st</sup> and 3<sup>rd</sup> ia persons

Ms Karwitha: Court Assistant

