



**Mugadi v Director of Public Prosecutions (Criminal Revision
E016 of 2021) [2022] KEHC 13444 (KLR) (23 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13444 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL REVISION E016 OF 2021
WM MUSYOKA, J
SEPTEMBER 23, 2022**

BETWEEN

ARNOLD MUGADI APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

RULING

1. Revision herein is sought by Arnold Mugadi, the applicant herein, of an order that was made by the trial court in Vihiga PMC Miscellaneous Criminal Application No. 51 of 2021, on 24th November 2021.
2. The matter came up for hearing on 26th November 2021 before Hon. RM Ndombi, Senior Resident Magistrate. The record reflects that the State prosecutor applied for custodial orders for two days to enable samples for deoxy nucleic acid (DNA) testing to be collected. The Advocate for the applicant objected, grounds that the applicant had been arrested on 24th November 2021 and had not been produced in court within 24 hours, and investigations ought to have been complete before arrest. The court allowed the plea by the State, in the interests of justice, and upon considering the nature of the offence.
3. The applicant was aggrieved by the order, and applied to this court, through a certificate of urgency by his Advocate, dated 29th November 2021, for revision of the decision of the trial court on the basis that:
 - (a) The applicant had not been informed or served with the application for them to be detained to facilitate investigations;
 - (b) The applicant had not been presented in court within 24 hours of his arrest and his continued arrest was illegal;
 - (c) The taking of samples for DNA purposes was illegal; and



- (d) The court with territorial jurisdiction was at Hamisi and not at Vihiga.
4. The prayers sought are that the orders of 26th November 2021 be set quashed, the applicant be realised on bond pending investigations, and an injunction be issued to restrain the taking of samples from the applicant for DNA purposes.
 5. As at the time the applicant was inviting the court to revise the orders of 26th November 2021, the State had already presented him in court with respect to his arrest, and it was clear by then that he had been apprehended in connection with a robbery with violence and gang rape investigation, and possible arraignment in court to face charges in that respect. Article 49 of *the Constitution* requires production in court within 24 hours of arrest. Consequently, where that period is exceeded, and no plausible reason is available for it, the arrest becomes illegal. However, that would not absolve the arrested person of any criminal liability, or operate to render any intended prosecution illegal. It would only entitle him to compensation for violation of his constitutional rights or for false imprisonment, which remedies he can pursue either by way of constitutional petition at the High Court or by a civil suit for general damages for the tort of false imprisonment at the court with the appropriate jurisdiction.
 6. On the legality of the taking of samples from the applicant for DNA testing purposes, I note that the offences that the police were investigating were very serious felonies, robbery with violence and gang rape. Robbery with violence is punishable by mandatory death, upon conviction, by dint of section 296(2) of the *Penal Code*, Cap 63, Laws of Kenya, and gang rape is punishable by a minimum of fifteen years in jail and a maximum of life imprisonment, according to section 10 of the *Sexual Offences Act*, No. 3 of 2006. Due to the seriousness of the offences being investigated against the applicant, there would be justification for abrogating the right to privacy in the interests of wide justice.
 7. On the matter of jurisdiction as between Hamisi and Vihiga law courts, territorial jurisdiction of courts is intended for administrative purposes, to ease administration of justice, and to avoid turf or territorial wars between officers manning various courts and police stations. It does not take away the competence of judicial officers or police officers to handle matters that are placed before them. Where officers get seized of a matter that falls outside of their geographical territory, they may handle it, but eventually cede it to the station, be it court or police, with jurisdiction. They ought not look away and decline to act merely because it happens to be outside geographical limits, for to do that would be to shirk their core responsibility, which is to fight crime.
 8. I find no merit in the revision sought by the applicant, and I hereby decline to revise the decision of the trial court and grant the orders sought. I regret the delay in the delivery of this ruling. I did not have the original file in my hands to facilitate revision of the order in question, and it was not availed until July 2022.

DELIVERED DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 23RD DAY OF SEPTEMBER 2022

W MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

