



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CRIMINAL DIVISION

CRIMINAL REVISION NUMBER E016 OF 2021

BETWEEN

STEPHEN VICKER MANGIRA.....APPLICANT

-VS-

REPUBLIC.....RESPONDENT

ASSET RECOVERY AGENCY.....INTERESTED PARTY

RULING

1. Stephen Vicker Mangira was jointly charged with three others in Shanzu Chief Magistrate Court Criminal Case no 257 of 2017 but after the conclusion of the trial he was acquitted in Counts II, IV, XII under section 215 of the Criminal Procedure Code. The trial Magistrate however declined to make orders regarding release of the exhibits for reasons that the same were subject to proceedings before the High Court.
2. The applicant was aggrieved by this order and by a letter dated 31st May, 2021, his advocate wrote to the Deputy Registrar requesting that the lower Court records be placed before the judge for revision of the trial Magistrates order refusing to release the exhibits to the applicant. The applicant based his application on the fact that the Asset Recovery Agency did not seek any order to hold the exhibits after the acquittal and that the trial Court had no jurisdiction to make civil orders in criminal proceedings.
3. The applicant argued further that the trial cannot be described as fair as envisaged under Article 25 (c) of the Constitution if after an acquittal the Court refuses to release property of an innocent person, he further claimed that his rights under Articles 27 (1) & (2), 31 (b) & 40(6) had been violated by the refusal to release his money and motor vehicles which had not been showed to have been acquired unlawfully. That the respondents did not file an appeal within the prescribed period of time which has since lapsed, therefore, the continued holding of exhibits was a violation of the presumption of innocence under Article 50 (2) (a),
4. The application was opposed by grounds of opposition dated 16th June, 2021, in which it was argued that orders sought against the judgment of 12th May, 2021 are not available in law; that there is no error apparent on the face of the record nor is the judgment of the trial Court illegal, incorrect or improper and the threshold for application for revision has not been met. The respondent's argued that the applicant has not filed a Constitutional petition despite claiming that his Constitutional rights have been violated and the Constitutionality or otherwise of the appointment of the Director Assets Recovery Agency cannot be a subject of these proceedings.
5. It was argued that the application for revision is frivolous and vexatious and an abuse of the Court process because it cannot be used as an appeal against the preservation orders made in High Court Misc. Civil Application No. 195 of 2017. The respondents argued that there is a danger that this Court may give conflicting orders if the revision application is heard in exclusion of Mombasa High Court Civil Application No. 195 of 2017 which was filed on 13th July, 2017.
6. A preliminary objection was also raised by principal state Counsel for director Asset Recovery Agency to the effect that the Court lacks jurisdiction to grant the orders sought where there are proceedings for forfeiture pending in a Court of concurrent jurisdiction. It was also argued in the objection that the applicant is a vexatious litigant who had filed another application in Mombasa Civil Misc. Application No. 195 of 2017 seeking similar orders and which was pending ruling on 9th July, 2021. The director Asset Recovery also indicated that the exhibits which are sought to be released are subject of an application for forfeiture in Mombasa High Court Civil Misc. Application No. 269 of 2017.
7. It was further argued that the application for revision raises issues that were not subject of the criminal proceedings and was therefore incompetent, misconceived, an abuse of the Court process and should be dismissed.

8. The applicant filed submissions in support of the application for revision and the Asset Recovery Agency filed submissions in support of the Preliminary Objection.

9. Having considered the application for revision filed on 2nd June, 2021, the grounds of opposition and the preliminary objection as well as the submissions and having called for and perused Mombasa H. C. Misc. Civil Application No. 195 of 2017 & 269 of 2017, as well as the judgment in Petition No. 4 of 2019, I have come to the conclusion that the issues raised in the application for revision, do not meet the threshold set out in Section 362 & 364 of the Criminal Procedure Code. The trial Magistrate in Shanzu Criminal Case No. 257 of 2017, declined to make an order for release of monies and vehicles which were produced as exhibits for the reasons that they were subject to proceedings before the High Court. Although the applicants did not annex pleadings and orders issued in the above quoted files in the High Court, it is clear that a ruling is pending in Mombasa H. C. Misc. Civil Application No. 195 of 2017 where by an application dated 19th May, 2021, the applicant herein sought that the preservation orders given on 13th July, 2017 be nullified, set aside, discharged or rescinded or be declared to be spent and overtaken by events.

10. In the same application, it was also sought that Kshs. 18,500,000/= deposited into the depositors account, in Shanzu Criminal Case No. 257 of 2017 and 7 motor vehicles listed therein be released to the applicant unconditionally and with immediate effect. This application dated 19th May, 2021, is a replica of the application in the revision file, therefore, it is true that the applicant has filed multiple causes in respect to the same issue and as Justice P.J Otieno observed in Mombasa Petition No. 4 of 2019-Stephen Mangira & another v SPM Shanzu & 9 others, making orders in the revision file will amount to an overlap and prospect of conflicting decisions over a subject in Mombasa H. C. Misc. Civil Application No. 195 of 2017 & 269 of 2017 which are still pending before Courts of concurrent jurisdiction.

11. The trial Magistrate could not have made an order releasing the exhibits where there are two pending causes in the superior Courts and where the High Court had issued preservation orders in Mombasa H. C. Misc. Civil Application No. 195 of 2017 which are still in force as it would amount to overstepping her mandate.

12. In the circumstances, the preliminary objection is upheld and the application for revision filed on 2nd June, 2021 is dismissed for being an abuse of the Court process. There shall be no orders as to costs.

It is so ordered.

Right of appeal 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT / ONLINE THROUGH MICROSOFT TEAMS, THIS 23RD DAY OF JULY, 2021

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:

Court Assistant: Ogwel

Respondent Counsel: Ms. Karanja

Applicant's Counsel: Mr. Kinyua Advocate

HON. LADY JUSTICE A. ONG'INJO

JUDGE