



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CONSTITUTION AND JUDICIAL REVIEW DIVISION**  
**MISC. CIVIL APPLICATION NO. 192 OF 2015**

**IN THE MATTER OF AN APPLICATION BY JOB KIGEN KANGOGO FOR LEAVE TO  
INSTITUTE A JUDICIAL REVIEW APPLICATION FOR ORDERS OR PROHIBITION**

**AND**

**IN THE MATTER OF NAIROBI CHIEF MAGISTRATE'S CRIMINAL CASE NUMBER 1150  
OF 2009**

**AND**

**IN THE MATTER OF THE PENAL CODE CHAPTER 63 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE CRIMINAL PROCEDURE CODE CHAPTER 75 OF THE LAWS  
OF KENYA**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE DIRECTOR OF PUBLIC PROSECUTION.....1<sup>st</sup> RESPONDENT**

**NAIROBI CHIEF MAGISTRATE,**

**MILIMANI COURTS.....2<sup>ND</sup> RESPONDENT**

**JOB KIGEN KANGOGO.....APPLICANT**

**RULING**

**Introduction**

1. By a Notice of Motion dated 3<sup>rd</sup> July, 2015, the *ex parte* applicant herein, **Job Kigen Kangogo**, sought the following orders:

**1. An order of prohibition do issue to prohibit the director of Public Prosecutions from presenting the Applicant or continuing the prosecution of the applicant in Nairobi Chief**

**Magistrate Criminal Case No. 1150 of 2009.**

**2. An order of prohibition do issue to prohibit the Nairobi Chief Magistrate, Milimani Courts from hearing or in any way dealing with Nairobi Chief Magistrate Criminal Case No. 1150 of 2009.**

**3. The costs of the application be provided for.**

2. After hearing the application, this Court found that as the applicant's averment that the complainant in the criminal case, the Bank, informed the 1<sup>st</sup> respondent to drop the charges against the applicant but due to unknown reasons the 1<sup>st</sup> Respondent decided to soldier on with the same, was not been controverted, the 1<sup>st</sup> Respondent failed to lay any basis upon which it could be concluded by this Court that the 1<sup>st</sup> Respondent has any prospects of successfully prosecuting the applicant.

3. Accordingly the Court on 31<sup>st</sup> August, 2016 proceeded to issue the following orders:

**1. An order of prohibition prohibiting the Director of Public Prosecutions from prosecuting the Applicant in Nairobi Chief Magistrate Criminal Case No. 1150 of 2009.**

**2. An order of prohibition prohibiting the Nairobi Chief Magistrate, Milimani Courts from hearing or in any way dealing with Nairobi Chief Magistrate Criminal Case No. 1150 of 2009.**

4. According to the Respondent whereas the said criminal case has ten accused persons the effect of the said order is that it affects all the accused persons 9 of whom were not parties to these proceedings.

5. Accordingly the Respondent applies that pursuant to section 99 of the Civil Procedure Act, the said order be clarified.

6. The ex parte applicant herein although notified did not attend the Court and therefore no objection was recorded on his behalf.

7. Section 99 of the *Civil Procedure Act* provides that:

***Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties.***

8. That the Court has inherent jurisdiction to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court is not in doubt. This is not a jurisdiction conferred by any legislation or statute but is a jurisdiction that inheres in any court of justice. On Inherent jurisdiction, **Ouko, J** (as he then was) in **The Matter of The Estate of George M'mboroki Meru HCSC No. 357 of 2004**, expressed himself as follows:

**"It is therefore accepted that the court retains certain intrinsic authority in the absence of specific or alternative remedy, a residual source of power, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent abuse of its process, to do justice between the parties and to secure a fair trial between them."**

9. Inherent power, it must be stressed is not donated by legislation. In **Ryan Investments Ltd & Another vs. The United States of America [1970] EA 675** it was held that section 3A of the *Civil Procedure Act* is not a provision that confers jurisdiction on the court but simply reserves the jurisdiction which inheres in every court. The court has inherent jurisdiction not created by legal provisions, but which only manifests the existence of such powers.

10. Dealing the same issue it was held in **Republic vs. The Public Procurement Complaints, Review and Appeals Board & Another Ex Parte Jacorossi Impresse Spa Mombasa HCMA No. 365 of 2006** that the Court has power under its inherent jurisdiction to make orders that may be necessary for the ends of justice and to enable the Court maintain its character as a court of justice and that this repository power is necessary to be there in appreciation of the fact that the law cannot make express provisions against all inconveniences.

11. However, it has been recognised that it is a jurisdiction that ought to be invoked where there is no specific remedy provided by the law. In the circumstances of this case an applicant has the right to move the court by way of review or under section 99 of the ***Civil Procedure Act*** which empowers the Court at any time either of its own motion or on the application of any of the parties to correct any clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission.

12. The principles that guide the exercise of the Court's powers under section 99 of the ***Civil Procedure Act*** were restated in **Sapra Studio Vs. Kenya National Properties Ltd (2) [1985] KLR 1011; [1986-1989] EA 519** in which the Court of Appeal held that the words "at any time" in section 99 of the ***Civil Procedure Act*** allow the court the power of amendment, even after the issue of the formal order and that the error or omission must be an error in expressing the manifest intention of the court. In other words there must be an error, which can be corrected so as to express the court's intention. It has therefore been held that the provision applies to the correction of clerical and arithmetical mistakes in judgement, decree or order arising therein from any accidental slip or omission; that is to say, errors of the Court involving the meaning or intendment of the judgement, decree or order which the court meant to pronounce. See **Laemthong Rice Co. Ltd vs. Principal Secretary Ministry of Finance [2002] 1 EA 119.**

13. In this case it is not in doubt that only the applicant moved this Court for judicial review orders. Dealing with similar circumstances this Court in **Republic vs. Director of Public Prosecutions & Another ex parte Patrick Onyango Ogola [2016] eKLR** cited with approval the decision in **David Ndolo Ngiali & 2 Others vs. Director of Criminal Investigations & 4 Others [2014] eKLR** where this Court expressed itself *inter alia* as follows:

**"In this case however, though leave was only expressly granted to the applicants herein, the order for stay as was framed by the applicants and granted by this Court on the face of it stayed the proceedings in the said Criminal Case...Yet the interested parties to whom leave was neither sought nor granted insist that the stay granted at the instance of the applicants who are not parties to the said proceedings ought to remain in force in their favour. In fact the applicants herein have submitted before this Court that were it not for the fact that the respondents have intimated that the applicants may be charged in future they would have had no problem withdrawing the application. In the event that the application is withdrawn would the interested parties still insist that the stay would remain in force? If the Court were to accede to that position it would with due respect turn this Court and its proceedings into a theatre of the absurd...Whereas the Court may perfectly grant an order staying proceedings whose effect would be to benefit non-parties, the Court ought to be cautious in order not to grant orders which may affect parties who may not be interested in having their criminal case delayed. Therefore for the Court to stay proceedings generally rather than the proceedings affecting the parties before it, the Court ought to be satisfied that all the parties were aware of the application for relief for stay and had no objection to the same being granted. In this case, it is clear that the interested parties herein not only did not seek orders for stay of the proceedings herein but in fact were unaware that such orders were being sought. In other words the interested parties never expected to reap the benefits of the stay orders which the applicants herein sought and obtained. As a result, no objection was taken to the amendment of the charge sheet whose effect was that the applicants were excluded from the criminal proceedings. The applicants sought *inter alia* an order prohibiting them from taking pleas in the criminal proceedings. The interested parties on the other hand have already taken the plea. Accordingly, the applicants' position cannot be said to be exactly the same as that of the interested parties. Having considered the submissions made herein I have no doubt in mind**

**that even going by the submissions made on behalf of the interested parties the stay granted herein was never intended to benefit the interested parties but were solely meant to protect the applicants to whom leave had been granted to commence judicial review proceedings. In other words the interested parties cannot be expected to take a free ride on the wings of the applicants' claims, claims which they never instituted and were unaware of."**

14. In this case I have no doubt in my mind that order (2) in the said judgement was only meant to inure to the benefit of the applicant who had invoked the jurisdiction of this Court and not to his co-accused.

15. In the premises the said order is hereby corrected as hereunder:

**An order of prohibition do issue to prohibit the Nairobi Chief Magistrate, Milimani Courts from hearing or in any way dealing with Nairobi Chief Magistrate Criminal Case No. 1150 of 2009 in so far as it relates to the applicant herein.**

16. There will be no order as to costs

17. Orders accordingly.

**Dated at Nairobi this 26<sup>th</sup> day of July, 2017**

***G V ODUNGA***

***JUDGE***

**Delivered in the presence of:**

**Mr Mule for the Respondents**

**CA Mwangi**