

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

CRIMINAL DIVISION

MISC CRIMINAL APPLICATION NO. 72 OF 2013

E W N APPLICANT

VERSUS

REPUBLICRESPONDENT

(From the original Criminal case No. 283 of 2014 of the Chief Magistrate's court at Kibera before Mr. Opande, Senior Resident Magistrate)

RULING

The applicant E W N has been charged in the lower court with the offence of child neglect contrary to Section 127 (1) (a) as read with Section 127 (1) (b) of the Children Act No. 8 of 2001. She then applied before the learned trial magistrate to order a DNA test be conducted on the father of the child to determine if he was the biological father of the child.

In his ruling the learned trial magistrate declined the request giving rise to an appeal by the applicant. In the meantime, an interim stay was sought and granted pending the hearing of the said appeal. Both learned counsel have filed submissions to address the application and cited some authorities.

It is the applicant's case that the charge facing her will either stand or fall on the result of the DNA test which the Police ought to have conducted before charging her. The application is opposed by the state upon the submission that the applicant has not demonstrated the nexus between an order for a DNA test with the present case.

I have considered the charge against the applicant alongside the submissions made by both learned counsel. I am of the view that the proceedings in the lower court should be stayed so that the applicant is not denied a fair trial as guaranteed under the Constitution and in particular Article 50 thereof.

Whether or not the DNA test will be allowed should be left to the court that will handle the appeal lodged by the applicant. Accordingly, Criminal Case No. 283 of 2014 before the Chief Magistrate at Kibera shall be stayed pending the determination of the appeal.

Orders accordingly.

SIGNED DATED and DELIVERED in court this 25th Day of June 2014.

A.MBOGHOLI MSAGHA

JUDGE