



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL REVISION NO. 24 OF 2014**

**ANNE WAMBUI KARIUKI.....APPLICANT**

**VERSUS**

**RESPONDENT.....REPUBLIC**

*(From the order in Criminal case Number 2684 of 2013 in the Chief Magistrate's court at Kibera)*

**RULING**

The applicant Ann Wambui Kariuki has been charged in the lower court with the offence of forgery contrary to Section 349 of the Penal Code. The genesis of the charge is a sale agreement said to be between the applicant and her brother over a parcel of land. A report prepared by a document examiner has been presented to the applicant's counsel which implicates her.

By a letter dated 24<sup>th</sup> March, 2014 the learned counsel for the applicant has submitted that the evidence so far adduced is contradictory and that the documents should be released to the applicant to enable her engage an independent document examiner and a report prepared to aid her defence. An application made before the learned trial magistrate to that effect was denied.

This is grounded on Article 50 (2) of the Constitution which provides that every accused person has the right to a fair trial which includes the right-

(c) To have adequate time and facilities to prepare a defence.

(k) To adduce and challenge evidence.

It is submitted that the failure by the learned trial magistrate to allow the accused's document examiner access to the documents is not only prejudicial but would infringe on her constitutional rights.

It is the duty of the courts to give effect to the tenor, context and spirit of the Constitution. With respect therefore, the learned trial magistrate should have acceded to the applicant's application aforesaid. The learned counsel for the Republic concedes the request by the applicant and therefore the order by the learned trial magistrate declining to release the exhibits to a document examiner of the accused's choice is hereby set aside.

The original file now shall be returned to the learned trial magistrate with directions that certified copies of the documents in question shall be released to the applicant for her document examiner to prepare a report within 14 days of the handing over of those documents. Thereafter the trial shall proceed expeditiously.

Orders accordingly.

**SIGNED DATED and DELIVERED** in court this **17<sup>th</sup>** day of July, **2014**.

**A.MBOGHOLI MSAGHA**

**JUDGE**