



REPUBLIC OF KENYA



**Muiruri v Republic (Miscellaneous Application E367 of 2022)
[2025] KEHC 2662 (KLR) (Crim) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2662 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS APPLICATION E367 OF 2022
CJ KENDAGOR, J
FEBRUARY 13, 2025**

BETWEEN

ESTHER MUTHONI MUIRURI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This Ruling arises out of the application dated 1st December, 2022 filed by the Applicant herein. The Applicant is an accused person in Chief Magistrate Court Milimani Criminal Case No. E657 of 2022, from the record availed the case is still ongoing.
2. The present Application seeks the following orders;
 - a. Spent;
 - b. Spent;
 - c. That in the said Criminal Case the Applicant herein is charged with Thirty One Counts {31}, which is totally unreasonable to charge an accused person with so many counts in one charge sheet;
 - d. That charging the Applicant with 31 counts, will most likely jeopardise and embarrass the Applicant's defence and unnecessarily delay the trial process contrary to Article 50 {2} € of *the Constitution*, on the Applicant's right to expeditious delivery of justice;
 - e. That the intended motive of the 1st Respondent in charging the Applicant in Milimani Criminal Case No. E657 of 2022 are for ulterior motives with the sole purpose to cause embarrassment and prejudice upon the Applicant;



- f. That it is established principle of criminal law that it is undesirable to charge an accused person with too many counts in one charge sheet;
 - g. That charging the accused person with such overloaded charge sheet will occasion prejudice in preparation of the Applicant’s defence case.
 - h. That it is proper for this Honourable Court to put the 1st and 2nd Respondents to its election of the inception of the trial as to the counts, upon which the 1st Respondent wishes to proceed.
 - i. That that proper prosecutorial practice dictates that it is proper to proceed with one charge only, especially where the charges are interlinked and prosecution ought to leave other charges in abeyance;
 - j. That in purporting to charge the accused person with an overloaded charge sheet, the 1st and 2nd Respondent herein has grossly violated express provisions of the law including Articles 25 (c), 28, 29, 31, 47, 49 (h), 50 (1) (2) a, b and c;
 - k. That with regard to the foregoing, the Applicants herein risk losing her right to fair trial, dignity and fair hearing anchored upon un-procedural, unconscionable, oppressive and malicious charged levied against Applicant;
 - l. That the Applicant herein risks losing her guaranteed constitutional right as enshrined in *the Constitution*;
 - m. That in this regard, if this Honourable Court does not intervene, the suit herein shall be rendered nugatory;
 - n. That the Court be pleased to reverse the bail and/or bond terms set by the trial magistrate since the said bail and/or the bond terms are inordinately high;
 - o. That it is therefore in the interest of justice that the orders sought herein are granted.
3. The Applicant has invoked this Court’s inherent jurisdiction under *the Constitution*, along with its supervisory and revisory powers. This supervisory jurisdiction is expounded under Section 362 and 364 of the *Criminal Procedure Code*, (supra). In a persuasive decision by Justice Odunga (as he then was) in *Joseph Nduvi Mbuvi v Republic* [2019] eKLR, the Judge stated:-
- “In my considered view the object of revisional jurisdiction of the High Court is to enable the High Court in appropriate cases whether during the pendency of the proceedings in the Subordinate Courts or at the conclusion of the proceeding to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing should be proceeded with. In other words, the High Court revisionary jurisdiction includes ensuring that where the proceedings in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such Subordinate Court as well.”
4. The Applicant did not make any attempts to pursue the application since it was filed, and the Court, on its own accord, dispensed with it during the case clearance exercise conducted in the High Court. The Respondent did not address the issues raised in the application and urged the Court to exercise its discretion in considering the application.



5. The record shows that the Applicant was admitted to bond on 2nd September, 2022 and so Prayers 4 and 5 on bond are spent.
6. The Applicant has asserted that the charge sheet presented in the criminal trial before the lower Court is irregular, un-procedural, and potentially prejudicial. The record indicates that the charges were read to the applicant, clearly enumerated by count, and she entered a plea of not guilty for all counts.
7. Upon reviewing the lower Court record, I have found that the prosecution has closed its case, and the defence hearing is currently underway, with both sides having had the opportunity to present their arguments and evidence. The Applicant has been actively engaging in the trial process, fully participating in all hearings alongside her legal representation.
8. The other issue is on the proceedings that took place on 30th November, 2022 where the Applicant contends that the matter proceeded part heard in the absence of her lawyer. I have reviewed the record and noted that the trial Court granted the appellant a time allocation in which counsel was expected to be present, given that the date was agreed upon by consent. The record indicates that the trial partly proceeded and it was in the presence of the Applicant. It also shows that, due to time constraints, the proceedings were adjourned to a later date, allowing the Applicant and her legal representation sufficient time to cross-examine the witness who testified on 30th November, 2022. The adjournment to a later date, along with the adequate time allocated to the counsel, demonstrates that they had the opportunity to fully represent the Applicant's interests concerning the examination of the testimony of the witness recorded on 30th November, 2022.
9. The Applicant will not suffer any prejudice if she continues to present her defence and waits for the final verdict. Considering the advanced stage of the trial, it is crucial to allow it to reach its conclusion without any unnecessary interruptions.
10. The Application dated 1st December, 2022 is not merited and is hereby dismissed with no order as to costs.
11. The Deputy Registrar shall ensure the prompt return of the lower Court record for disposal by the trial Court.
12. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 13TH DAY OF FEBRUARY, 2025.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

No attendance by Applicant

Mr. Omondi, ODPP for Respondent

