



**Republic v Kamau & another (Criminal Revision E317 of 2024)
[2025] KEHC 1650 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1650 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E317 OF 2024
E OMINDE, J
FEBRUARY 13, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

JOSEPHAT KAMAU 1ST RESPONDENT

MOSES MURIITHI WAWERU 2ND RESPONDENT

RULING

1. The applicant approached this court *vide* an application dated 05/07/2024 seeking the following orders;
 1. That this honourable court urgently call for the trial court file being Eldoret Chief Magistrates Court Case No. 3368 of 2019 which is before Hon. D Mikoyan CM in court number 1 and examine the record of the proceedings as to the legality and or the finding made by the Honourable court.
 2. That the honourable court be pleased to alter/or revise the said order made by the trial court upholding the objection of the defence that the prosecution does not cross examine the 2nd accused person, one Moses Muriithi Waweru as to the contents of the statement he recorder at the police station upon his arrest for the offence he is currently facing before the honourable court.
 3. That the honourable court do issue stay of proceedings in Eldoret Chief Magistrate’s Criminal Court case no. 3368 of 2019 until this application is determined.
2. The application is premised on the grounds on the face of it.
3. According to the Applicant, this application arises from the proceedings in Eldoret Chief Magistrates Court Case No. 3368 of 2019 where the Respondents were charged with the offences of smuggling



goods contrary to section 199(a) as read with section 199(iii) of the *East Africa Community Customs Management Act* and Importing restricted goods contrary to section 200(a)(ii) as read with section 210 and 211 of the *East Africa Community Customs Management Act*.

4. The Respondents pleaded not guilty and were placed on their defence. During cross examination of the 2nd respondent on 11/06/2024 the defence raised the objection against the prosecution for cross examining the respondent based on the statement he recorded with the investigating officer at the police station upon his arrest, which objection was upheld by the court. Being aggrieved with these orders, the applicant filed the present application.
5. The Respondent did not respond to the application. Prosecution counsel filed submissions dated 21/10/2024 in support of the application and the Respondent filed theirs dated 8th November 2024.
6. I have considered the submissions. I note that in both, the parties are agreed that the Court has Supervisory Powers over the Subordinate Court as follows;
7. Articles 165 (6) and (7) of the [Constitution](#) provide that,
 - “(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration.”
8. Section 362 of the [Criminal Procedure Code](#) provides the High Court with the power to call for records as follows;

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.
9. I note from the submissions that both Counsel have already gone ahead of themselves and delved into the merits and demerits of the decision made by the Hon Chief Magistrate D. Mikoyan yet that said decision is the reason for which this Court is being called upon to exercise its Supervisory Jurisdiction over the Chief Magistrates’ Court by calling for the file relating Eldoret Chief Magistrates Court Case No. 3368 of 2019 and examine the record of proceeding that culminated into the impugned Ruling and make finding on its correctness legality or propriety.
10. The Court must first of all call for the proceedings because it cannot make a finding in a vacuum. The second decision that the Court must make at this stage is whether it should stay the proceedings of the Lower Court in that intervening period. As can be gleaned from the above cited provisions of the law, the Court does indeed have the mandate to call for proceedings.
11. On whether the Lower Court proceedings should be stayed in the interim period, the following decision is relevant;



12. In *Kenya Wildlife Service v James Mutembei* [2019] eKLR the court held that: -

“Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent. This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases...”

13. Further in the case of *Wainaina & another v Republic* (Criminal Application E030 & E032 of 2022 (Consolidated) [2023] KECA 727 (KLR) (9 June 2023) (Ruling), the Court of Appeal expressed itself as follows;

‘The law as regards the principles that guide the Court in such an application are now well settled. The Court exercises unfettered discretion which must be exercised judicially. The applicant needs to satisfy the Court, firstly, that the appeal, or intended appeal is not frivolous, that is to say that it is an arguable appeal. Secondly, the Court must also be persuaded that were it to dismiss the application for stay and later the appeal or intended appeal succeeds, the results or the success could be rendered nugatory.’

14. I have broadly addressed my mind to the submissions on the reasons for which the Revision Orders are sought as well as the response thereto by the Accused and it is my considered opinion that this is a case that warrants that proceeding be stayed pending the decision of the Court. In this Regard I am satisfied that the Application by the Applicant has merit and the same is allowed as hereunder;

- a. That the Court Administrator, Chief Magistrate’s Court, Eldoret, is now hereby directed, to forthwith avail to this Honourable Court through the office of the Deputy Registrar, the Trial Court file, being Eldoret Chief Magistrates Court Case No. 3368 of 2019 before Hon. D. Mikoyan Chief Magistrate Court Number 1 for the purpose of satisfying itself as to the correctness, legality or propriety of a decision therein made by the Hon Chief Magistrate.
- b. That pending the hearing and determination of this Application, the proceedings in Eldoret Chief Magistrate’s Criminal Court case no. 3368 of 2019 are now hereby stayed.
- c. Costs in the cause.

READ DATED AND SIGNED AT ELDORET ON 13TH FEBRUARY 2025

E. OMINDE

JUDGE

