



Republic v Directorate of Public Prosecution & 3 others; Karuga (Exparte Applicant); Kuria (Proposed Interested Party) (Judicial Review Cause E039 of 2024) [2025] KEHC 1512 (KLR) (Judicial Review) (5 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1512 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW CAUSE E039 OF 2024
JM CHIGITI, J
FEBRUARY 5, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

DIRECTORATE OF PUBLIC PROSECUTION 1ST RESPONDENT

DIRECTORATE OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT

HON ATTORNEY GENERAL 3RD RESPONDENT

CHIEF MAGISTRATE COURT NAIROBI 4TH RESPONDENT

AND

MWAURA KEVIN KARUGA EXPARTE APPLICANT

AND

GEOFFREY KIARIE KURIA PROPOSED INTERESTED PARTY

RULING

1. The court gave a ruling in this matter on 30th September 2024 in relation to the application dated 29th March 2024.
2. Being dissatisfied with the said ruling, the Exparte Applicant filed an application dated 2nd October, 2024 seeking the following orders;
 1. spent.



2. That this Honourable Court be pleased to review its Ruling dated 30th September 2024.
3. That in the alternative this Honourable Court be pleased to review and/or set aside its Ruling dated 30th September 2024 and disallow the Application for joinder dated 29th March 2024 by the intended interested party.
4. The costs of this application be provided for.
3. The application is supported by the Ex parte Applicant's affidavit dated 2nd October, 2024.
4. On his part, the interested party filed a replying Affidavit dated 3rd December, 2024. In his affidavit, the interested party confirms that the Applicant served his Advocates with a Replying Affidavit dated 10th April, 2024 on 17th April, 2024. It is further his case that if the Court determines the ex parte application in the affirmative, then he shall not have any objection with the Court delivering another ruling after considering the ex parte Applicant's Replying Affidavit so as to rectify the error.
5. It is his case that in the alternative if the Court finds in the negative, that the said Replying Affidavit was not properly on record, then he prays that the current application be dismissed with costs.
6. In its ruling dated 30th September 2024, this Court made a ruling wherein it stated that the Application dated 29th March 2024 is not opposed by any replying Affidavit and that the Ex parte Applicant filed submissions which cannot stand on their own.
7. It is the Ex parte's case that the finding by the Court is wrong because the Replying Affidavit was actually filed on 17th April 2024. It is further his case that in the circumstances, the Decision was made in error apparent on the face of the record.
8. Under section 80 of the *Civil Procedure Act* and order 45 rule 1 of the Civil Procedure Rules, the court may review its decision, inter alia: - on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.
9. An error or mistake apparent on the face of the record is one that is self-evident and does not require elaborate arguments to be established. See *Paul Mwaniki v NHIF Board of Management* [2020] eKLR;
10. In the case of *National Bank of Kenya Ltd vs Ndungu Njau*;

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”
11. As confirmed by the Intended interested party, this court is satisfied that the Ex parte Applicant filed a Replying Affidavit on 17th April 2024 and that there was an apparent error on the face of the record to the extent that the court observed that there was no replying Affidavit on record.
12. Having so decided, this court shall now proceed to determine the Application dated 29th March, 2024 a fresh wherein the intended interested party sought the following Orders:
 1. That the Honourable court be pleased to grant Geoffrey Kiarie Kuria leave to be enjoined in the instant suit as an interested party.



2. That the costs of this application be provided for.
13. The application is supported by the affidavit of the applicant the proposed interested party. He is the Complainant in MILIMANIMCCR/E 1107/2023.
14. The Ex-Parte Applicant herein used to be his family's Advocate until December 2021 when his services were terminated Leading to his cyber-bullying insulting the family through text message and email, not even r elderly mother was spared.
15. In the year 2023 when he started to insult the applicant's mother in his said emails the applicant decided to report the matter to the police.
16. The Exparte applicant was summoned by the Investigation Officer and on 18/12/2023, he was arraigned in court and charged with five (5) counts of cyber harassment contrary to section 27(1) (c) as read with section 27(2) of the Computer Misuse and Cyber Crime Act.
17. As the complainant in Milimani MCCR/E 1107/2023 wherein the Ex-parte Applicant is the Accused person, the Applicant strongly believes that he has an interest not just in the proceedings herein, but also in the would be orders of the court.

Ex parte Applicant's case;

18. In opposing the application, the Exparte applicant's replying affidavit in response to the interested party's Application for enjoinder dated 29th March 2024 Mwaura Kelvin Karuga filed a replying Affidavit on 8th April, 2024.
19. The interested party confirmed as much.
20. It is his case that the interested parties would try and refuse with my unpaid legal fees, and the problem with this situation is that it is his Mother Margaret Wanjiru who pays legal fees even for Geoffrey's.
21. He believes that it is not necessary to enjoin the intended interested party to this case given that there is already a case before the Chief Magistrate Court pitting the interested party and the Ex parte Applicant where the real issue will be ventilated.
22. According to him if the application is allowed, then that would amount to subjecting him to double jeopardy.
23. He is persuaded that The instant petition is an offshoot of the matter before the Chief Magistrate's Court Nairobi as the Ex parte Applicant herein seeks to stop the respondents from Proceeding with the Prosecution and Hearing of the criminal charges against him over the same dispute.
24. It is his case that the instant petition is purely a matter between the respondents and the Ex-parte Applicant and the interested parties' issues have well been taken care of by the Director of Public Prosecution.
25. It is further his case that the proposed interested party is already aware of the existence of the present petition for Judicial review and that its interests have already been catered for by the respondents who are well versed with investigations or the intended prosecution should the same be conducted.
26. He argues that the interested party will not, in the totality of the circumstances of this case, be a necessary party to this case, especially because the proposed interested party has not demonstrated that the respondents will be incapable or unwilling to present his/complainants side of the story in the instant petition.



27. The DPP has a constitutional mandate to independently institute and undertake criminal proceedings and to this end the intended interested party has not placed before court any sufficient material to form a basis for the court to interfere with the said constitutional and discretionary mandates.
28. To grant the orders sought by the intended interested party will amount to the court interfering with the constitutional mandates of other constitutional bodies without a proper basis in law, because the intended interested party is in essence usurping the roles of the Respondents herein in the manner and contents of his Application for enjoinder.
29. He believes that since the applicant in his supporting Affidavit dated 29th March 2024 where he says, that “the Ex-parte Applicant claimed that the Exparte applicant had insulted him via email, and when he was asked by the Investigation Officer to furnish him with extracts of the said emails he was bullish and he arrogantly told the said Investigating Officer that they shall meet in court” which is totally false, and there is no material evidence placed before the Court to ascertain this as a fact.
30. It is his case that in any event it is the said Investigating officer who ought to put this in an Affidavit. It is his argument that the Application is Vexatious, scandalous and an abuse of the Court process, which is ripe to be dismissed with costs.
31. He takes issue with the fact that the intended interested party has conveniently failed to address this Court on the fact that he has two email addresses being Geoffrey.kiariek@gmail.com and Joivoh00@gmail.com and that the email address that he had email chats from mwurakelvin6@gmail.com retrieved from was Joivoh00@gmail.com and concealed his email chats from Geoffrey.kiariek@gmail.com to mwurakelvin6@gmail.com because that is where his offensive emails originated from, yet the Communications Authority of Kenya established that the email address Geoffrey.kiariek@gmail.com indeed belongs to him, and that is not a mere technicality but the very reason why the present Application for Judicial Review dated 2nd February 2024 was instituted, because the Investigating officer was acting on the behest of the Complainant Geoffrey Kiarie and therefore the Concealment of the email chats from Geoffrey.kiariek@gmail.com to mwurakelvin6@gmail.com was very deliberate so as to hide the fact that he committed Cyber harassment against me and therefore the investigations and events leading to him being charged were actuated by Malice.
32. He believes they took into account factors which ought not to have been considered, and failed to take into account factors which ought to have been considered, and therefore they were irrational, unreasonable and resulted in a violation of *the Constitution* and the Fair Administrative Actions Act.
33. He argues that this petition primarily challenges the Respondents’ exercise of their Constitutional and statutory functions and not the evidence to prove the alleged cyber harassment which will be determined by the criminal court should the criminal charges against him proceed.
34. It is his case that he filed a complaint against the said intended interested party, Geoffrey Kiarie Kuria with the 2nd Respondent herein, and they have begun their investigations.
35. He argues that the intended interested party is misleading the detectives, that his complaints were being handled by Nairobi area DCI office, which is false since that is where he reported the Exparte applicant.
36. The Application to be enjoined as an interested party, is only meant to be a last minute attempt at convoluting issues, and abusing the Court Process. He is troubled by the fact that the Investigating Officer has been silent and has not filed any response as to how he escaped seeing Geoffrey Kiarie Kuria’s offensive emails from Geoffrey.kiariek@gmail.com to my email address mwurakelvin6@gmail.com.



37. He believes that this application is filed as a result of the fear that the Hearing in Criminal case E1107 of 2023 will not proceed, because he intends to air his dirty linen in public, and that is why he has gone ahead to reproduce “evidence” before this Honourable Court, yet it is not the trial Court, and moreover, he has adduced “evidence” of text messages allegedly sent by the Exparte applicant, which text messages have clearly been truncated to again, conceal the text messages he sent to the Exparte applicant as well, and these texts (sms) also are not part of the investigating officer’s record, they are not part of the record in Criminal case E1107 of 2023, and therefore this is highly prejudicial the Exparte applicant.
38. He urges the court to be alive to the fact that he is hell-bent on settling personal scores/vendetta and is merely using the Criminal Justice Process to achieve ulterior Motives.
39. The respondents have filed a detailed grounds of opposition dated 28th March 2024, to the Exparte’s petition and the interested party has not stated that the said response is inadequate or wanting so as to necessitate their entry into the case.

Analysis and determination;

40. Upon perusing the application as well as the affidavits and rival submissions, this court identifies the following to be the issues for determination:
 1. Whether or not the intended interested party has made out a case for the grant of the orders sort.
 2. Who should bear the cost of this application.

Whether or not the intended interested party has made out a case for the grant of the orders sort.

41. It is the courts’ finding that the fact that there are criminal proceedings pending in the criminal court, cannot form the basis as advanced by the Exparte applicant of an argument that he will be subjected to double jeopardy if the intended interested party is joined in the proceedings before this court.
42. The criminal court and the judicial review courts have different jurisdictions that allow them to proceed with their respective mandates.
43. The question of malice as well as the investigations and the accusation or allegation that the investigating officers failed to appreciate the issue of the Exparte applicant’s different email addresses has no bearing on the application for joinder of an interested party.
44. The fact that the investigating officer did not record or file any documents cannot form the basis of denying the intended interested party as a victim of crime to his right to access to this court, and I so hold.
45. The fact that the Director of Public Prosecutions is a party to the suit, and that they have statutory and constitutional mandate to prosecute, cannot form the basis of denying the intended interested party the order to participate in the proceedings before this court.
46. The intended interested party as the complainant in the criminal court has an identifiable stake and an interest in what is going on before this court and to deny the complainant access to the proceedings before this court will amount to denying the intended interested party his right to fair hearing as a complainant as guaranteed under Article 50 of *the constitution* and I so hold.
47. In any event, this court is of the view that the grounds that the Exparte applicant is advancing before this court that can be sufficiently ventilate before trial court at the time of the hearing if he so wishes.



48. I am guided by the case of Kingori vs. Chege & 3 Others [2002] 2 KLR 243 where the learned Judge stated that the guiding principles when an intending party is to be joined are as follows:
1. He must be a necessary party.
 2. He must be a proper party.
 3. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.
 4. The ultimate order or decree cannot be enforced without his presence in the matter.
 5. His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.
49. As the complainant in Milimani MCCR/E 1107/2023 wherein the Ex-parte Applicant is the accused person, it is clear to this court that the intended interested party/Applicant has an interest not just in the proceedings herein, but also in the would be orders of the court.
50. I am satisfied that the applicant presence in this suit is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.

Disposition;

51. The application has merit.
- Order;
1. The Ruling dated 30th September 2024 is hereby reviewed and set aside.
 2. Geoffrey Kiarie Kuria is hereby added in the instant suit as an interested party.
 3. The Exparte Applicant and the Respondents shall serve the interested party with all the pleadings within 7 days of today's date.
 4. The interested party is hereby granted leave to respond within 14 days thereafter.
 5. The Exparte Applicant is at liberty to file a further affidavit if need be.
 6. The matter shall be mentioned on 25th March 2025 to report compliance.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF FEBRUARY, 2025.

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J.M. CHIGITI (SC)

JUDGE

