



REPUBLIC OF KENYA



KENYA LAW
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**Kilonzo v Republic (Criminal Revision E226 of 2024)
[2025] KEHC 3539 (KLR) (14 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3539 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL REVISION E226 OF 2024**

M THANDE, J

MARCH 14, 2025

BETWEEN

MAURICE KILONZO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant, an advocate of this Court, filed the present revision application dated 4.12.24, seeking suspension of orders issued in a ruling dated 26.11.24 by Hon. James Mwaniki in Kilifi CRMCC No. E906 of 2024 (the criminal case) ending the hearing and determination of the Application. In the impugned ruling. The learned Magistrate directed the Applicant to hand over to the investigating officer the original Certificate of Title No. CR 23254 (the Title) in respect of Plot No. 637 (the property), Mambui, together with the original power of attorney between Gala Holdings Limited and Daniel Ricci for forensic examination.
2. The record shows that in the criminal case, Daniel Ricci is charged in the criminal case, with the various offences ranging from fraud, obtaining money by false pretences to personation, all relating to the property.
3. The Applicant took issue with the order by the trial Magistrate on account of the fact that Daniel Ricci had not taken plea in the criminal case and the Applicant had not been summoned to record a statement by the investigating authority.
4. When the matter came for directions inter partes on 14.1.25, the Applicant sought stay of the impugned orders pending the hearing and determination of the Application. The Court granted stay after counsel for the Respondent stated that he had no objection.
5. Before Court for determination are 2 Applications for joinder. The first Application is dated 22.1.25 and is by Dr. Peter Mureithi (Mureithi), the complainant in the criminal case. His case is that he had



retained the services of the Applicant in the conveyance between himself and other buyers and Gala Holdings Limited (GHL). Further that GHL had in 2019 appointed Ricci as its selling agent for a limited purpose and capacity. The original power of attorney and Title were in the custody of the advocates of GHL, Daly Inamdar Advocates LLP. Ricci was to refer buyers to the said advocates, in terms of an agency agreement dated 7.6.19 between him and GHL. Daniel Ricci failed to disclose this fact and holding himself out as one with full authority and capacity, he sold the property to unsuspecting purchasers like Mureithi and other buyers. He entered into bogus agreements for sale and fraudulently obtained colossal sums of money from Mureithi and other victims to the tune of Kshs. 35,000,000/=. After discovering that Ricci was engaging in fraudulent transactions, the Applicant advised Mureithi and others to report the matter to the police.

6. Mureithi further stated that summons was issued to the Applicant to release the original Title and power of attorney to the investigating officers for forensic analysis and the advocates watching brief for Mureithi and Ricci told the court they had no objection. Further that in spite of the Applicant requesting 48 hours to produce the documents, he failed to do so. Having failed to honour summons and to comply with court orders he was found to be in contempt in a ruling of 16.12.24. After failing to purge his contempt, the court issued a warrant of arrest on 26.11.24. Mureithi thus stated that justice cannot be served in the criminal case. If the documents in question are not authenticated. Further that he stands to suffer grave prejudice if the Applicant, a contemnor with unclean hands, is allowed to continue acting with impunity and in defiance of court orders by approaching this Court to sanitize his actions.
7. The second Application is dated 23.1.25 and is filed by Ravina Beach Gardens Limited (RBGL) also a complainant in the criminal case. Mureithi a director, RBGL swore an affidavit on 23.1.25, in support of the Application. He stated that RBGL also retained the legal services of the Applicant in the conveyance between Mureithi, other buyers and GHL. The averments in the affidavit are identical to Mureithi's averments in his affidavit in support of his own application. The Court need not regurgitate the same.
8. The Applications are opposed by the Applicant vide his replying affidavit sworn on 3.2.25. He contended that the Applications cannot be anchored on Section 9 of the *Victim Protection Act* since revision proceedings herein are not a criminal trial and merely seek a reexamination of the trial record to ascertain correctness, propriety or legality of impugned orders. By allowing the Applications, the Court will overstep its revision mandate.
9. It was further averred that the trial court has not even started as Ricci is yet to take plea. The Applicant added that the revision has not been filed by Ricci, the accused person to warrant the participation of the Mureithi and RBGL. Further that RBGL has no interest or identifiable stake in the criminal case as it was not a party to the agreement dated 26.9.23 that led to the criminal case. The Applicant contended that Mureithi and RBGL have not disclosed to the Court how they are directly affected by the revision proceedings. They have also not demonstrated what prejudice they will suffer if the DPP proceeds with the revision application based on the voluminous replying affidavit by Phenix Oduya which has all the documents from Mureithi. In addition, they have not satisfied the Court that the issue they intend to canvass in the revision proceedings, which issues are relevant to the matter for determination before the Court, cannot possibly be adequately canvassed by the DPP participating alone in the proceedings.
10. The Applicant further averred that applications are a replica of the replying affidavit by PC Phenix Oduya filed by the DPP in response to the revision albeit with more misleading information as to what happened in the lower court and the transaction leading to the charges in Kilifi law courts. Lastly, that Mureithi and RBGL have not set out reasons why they think that their interests may be infringed, violated or impugned by failure to be enjoined.



11. The only issue for determination is whether the proposed interested parties should be joined in the proceedings herein as interested parties.
12. Black's Law Dictionary Tenth Edition defines "interested party as:

A party who has a recognizable stake (and therefore standing) in a matter.
13. For a party to be joined in proceedings, it must be demonstrated that such party has a clear interest and recognizable stake in the case and any orders issued by the Court would affect such party. In *Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others* [2017] eKLR, Mativo, J (as he then was) observed:

It is a fundamental consideration that before a person can be joined as party, it must be established that the party has an interest in the case. In addition, it must be clearly demonstrated that the orders sought in the suit would directly and legally affect the party seeking to be enjoined (sic).
14. And in the case of *EG v Attorney General; David Kuria Mbote & 10 Others (Interested Parties)* [2021] eKLR the Court of Appeal held as follows:
 - (1) The core of the court's power to join a party to any proceedings including at the appellate stage, as aptly discussed in *Hamisi Yawa & 36,000 others vs. Tsangwa Ngala Chome & 19 others* [2018] eKLR, is to bring on board a necessary party for purposes of determining the real issue(s) in dispute. Also, a joinder of a party is not an automatic right, but one which is granted upon exercise of the discretion of the court concerned. Nonetheless, the court exercises such discretion under defined parameters, that is, it must be satisfied that: -
 - a) The intended party has a personal interest or stake in the matter in question; and that interest is clearly identifiable and proximate enough and not merely peripheral.
 - b) The intended party's presence would enable court to resolve all the matters in the dispute.
 - c) The intended party would suffer prejudice in case of non-joinder.
 - d) The joinder of the intended party will not vex the parties or convolute the proceedings with unnecessary new matters and grounds not contemplated by the parties or envisaged in the pleadings.
15. Do Mureithi and RBGL have a recognizable stake in the matter herein that requires them to be joined as interested parties? Put differently, would failure to join them result in their suffering any prejudice? From the exhibited charge sheet, it is evident that the Mureithi and RBGL are the complainants in the criminal case. This in my view gives them an identifiable stake and interest in the revision herein which challenges the order by the trial court, requiring the Applicant to hand over to the investigating officer the original Title to the property as well as the original power of attorney.
16. Having found as I have, that the proposed interested parties have demonstrated that they have a recognizable stake the matter herein being complainants in the criminal matter, their presence will enable the Court get a different view concerning the matter, as was aptly stated by the Court of Appeal in the case of *EG v Attorney General* (supra). They have an identifiable stake in the production in the trial court, of the documents in question and the decision of this Court in the revision will no doubt directly and legally affect them. As such, they will suffer prejudice if not included as interested parties herein.



17. In the end and in view of the forgoing, I find that the applications dated 22.1.25 and 23.1.25 are merited and are hereby allowed. The Interested parties shall file and serve a replying affidavit to the application dated 4.12.24 by 28.3.25.

DATED SIGNED AND DELIVERED IN MALINDI THIS 14TH DAY OF MARCH 2025

M. THANDE

JUDGE

