



**Gakuo v Republic (Miscellaneous Criminal Application
E009 of 2025) [2025] KEHC 4139 (KLR) (2 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4139 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
MISCELLANEOUS CRIMINAL APPLICATION E009 OF 2025**

JK NG'ARNG'AR, J

APRIL 2, 2025

BETWEEN

DR JOSEPH KARIUKI GAKUO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Application that is before me is the Notice of Motion Application dated 11th March 2025 where the Applicant sought the following orders that: -
 - i. Spent.
 - ii. This Honourable Court be pleased to grant stay of execution orders of the court dated 11th March 2025 of Hon. M. Mbeti (Resident Magistrate) in Bomet Chief Magistrate's Court Miscellaneous Application Number E016 of 2025 pending the hearing and determination of this Application.
 - iii. This Honourable Court be pleased to stay proceedings before Hon. M. Mbeti (Resident Magistrate) in Bomet Chief Magistrate's Court Miscellaneous Application Number E016 of 2025 and Sexual Offences Case Number E052 of 2024.
 - iv. This Honourable Court be pleased to call for the record of proceedings in Bomet Chief Magistrate's Court Miscellaneous Application Number E016 of 2025 and Sexual Offences Case Number E052 of 2024 for purpose of giving directions.
 - v. This Honourable Court be pleased to review and set aside orders of the court dated 11th March 2025 of Hon. M. Mbeti (Resident Magistrate) in Bomet Chief Magistrate's Court Miscellaneous Application Number E016 of 2025.



- vi. Further and in the alternative, this Honourable Court do make such other orders as it may deem just and expedient pending the hearing and determination of this Application.
2. The Application was brought under sections 150, 362, 364, 365, 366 and 367 of the Criminal Procedure Code, and Articles 49, 50 (2), 165 (6), 165 (7) of the Constitution of Kenya. The Applicant relied on the grounds on the face of the Application and further by the supporting affidavit sworn on 11th March 2025 by Dr. Joseph Kariuki Gakuo.

The Applicant's case

3. The Applicant stated that the trial court delivered a Ruling in respect of the Application dated 21st January 2025 in Bomet Chief Magistrate's Court Miscellaneous Application Number E016 of 2025. That the trial court erred in allowing the said Application as he (Applicant) was no longer a suspect but an Accused person in Bomet Chief Magistrate's Court Sexual Offence Number E052 of 2024. He further stated that in allowing the Application dated 21st January 2025, the trial court violated his rights as enshrined under Articles 49 and 50 of the Constitution of Kenya.
4. It is the Applicant's case that a warrant of arrest was issued against him on 11th March 2025 and he was apprehensive that he would be arrested. That if the warrant of arrest was to be executed, it would make the present Application nugatory and an academic exercise. It was his further case that the trial court issued the warrant of arrest despite being functus officio.
5. There was no response to the Application by the Respondent. There is an Affidavit of Service on record and the same is dated 24th March 2025. It indicates that the Respondent was served with the present Application on 12th March 2025. I am satisfied that the Respondent was duly served with the present Application.

The Applicant's submissions.

6. Through his written submissions dated 24th March 2025, the Applicant submitted that he was on the verge of being arrested for the purpose of compelling him to undergo a DNA test despite him being charged in Bomet Chief Magistrate's Court Sexual Offence Number E052 of 2024. That the fact that he was charged meant that the police had completed their investigations without the need for DNA sampling.
7. It was the Applicant's submission that he was out on bail and in allowing the Application for DNA sampling, the trial court violated his right against self-incriminating evidence and it was akin to helping the Respondent build their case against him. That he invoked this court's revisionary power against the trial court's Ruling that compels him to undergo a DNA test. He relied on Craft Silicon Limited v Republic; Namai & 5 others (Accused) [2022] KEHC 424 (KLR), Robert Julu v Republic [2011] KEHC 710 (KLR) and R.M.K v AKG and another [2013] KEHC 5547 (KLR).
8. This court's revisionary jurisdiction is exercised under the provisions of Section 362 of the Criminal Procedure Code which states: -

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. In *Joseph Nduvi Mbuvi v Republic* [2019] KEHC 9895 (KLR), Odunga J. (as he then was) held that:-

“In my view, the revisionary jurisdiction of the High Court should only be invoked where there are glaring acts or omissions but should not be a substitute for an appeal. In other words, parties should not argue an appeal under the guise of a revision. It is for this reason that the decision whether or not to hear the parties or their advocates is discretionary save for where the orders intended to be made will prejudice the accused person. As was stated by the High Court of Malaysia in *Public Prosecutor v Muhari Bin Mohd Jani and another* [1996] 4 LRC 728 at 734, 735:-

“The powers of the High Court in revision are amply provided under section 325 of the *Criminal Procedure Code* subject only to subsections (ii) and (iii) thereof. The object of revisionary powers of the High Court is to confer upon the High Court a kind of “paternal or supervisory jurisdiction” in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice...If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion... This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammelled and free, so as to be fairly exercised according to the exigencies of each case”.

10. The Applicant stated that his rights to a fair trial were violated by the trial court’s Ruling dated 21st March 2025 which required him to present himself for a DNA test. The Applicant further stated that he was an Accused person in Bomet Chief Magistrate’s Court Sexual Offence Number E052 of 2024 and compelling him to undergo a DNA test was akin to self-incrimination. As I have earlier noted, the present Application was unopposed. It would be remiss of me to grant the orders prayed for by the Applicant before going through the trial court record as empowered by Section 362 of the *Criminal Procedure Code*.

11. In the interest of justice, I make the following orders:-

- i. The order dated 11th March 2025 by Hon. M. Mbeti (Resident Magistrate) in Bomet Chief Magistrate’s Court Miscellaneous Application Number E016 of 2025 is stayed pending the perusal of Bomet Chief Magistrate’s Court Miscellaneous Application Number E016 of 2025 and Sexual Offences Case Number E052 of 2024.
- ii. Bomet Chief Magistrate’s Court Miscellaneous Application Number E016 of 2025 and Sexual Offences Case Number E052 of 2024 be availed to this court for further directions.
- iii. Mention on 28th April, 2025.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 2ND DAY OF APRIL, 2025.

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HON. JULIUS K. NG’ARNG’AR

JUDGE

Ruling delivered in the presence of Ayiekha for the State, Mugumya for the Applicant and Siele/Susan (Court Assistants).

