



**Atwetwe v Devani & 4 others (Criminal Revision E1767 of 2024)
[2025] KEHC 6190 (KLR) (Crim) (5 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6190 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E1767 OF 2024**

AM MUTETI, J

MAY 5, 2025

BETWEEN

GEORGE DICKS ATWETWE APPLICANT

AND

YAGNESH MOHANLAL DEVANI 1ST RESPONDENT

MAHENDRA PATHAK 2ND RESPONDENT

BENEDICT MUTUA 3RD RESPONDENT

**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS ... 4TH
RESPONDENT**

TRITON PETROLEUM COMPANY LIMITED 5TH RESPONDENT

RULING

1. The applicants in the Notice of Motion dated 9th December 2024 sought the following orders from this court:
 - i. That this application be heard on a priority basis in the first instance;
 - ii. That this Honorable Court to stay the proceedings in *Milimani Criminal Case No. 1151 of 2009*, pending the hearing and final determination of this application inter partes.
 - iii. That this Honourable court be pleased to call for and examine the record of the proceedings in *Milimani Criminal Case No. 1151 of 2009*, Republic v Yagnesh Devani & 6 Others, for the purpose of satisfying itself as to the correctness, legality, or propriety of the ruling delivered by Hon. R.K Ondieki, SPM, on 12th November 2024.



- iv. That this Honorable court be pleased to review, vary, reverse, and/or alter the orders issued on 12th November 2024 by the Honorable Trial Magistrate in *Milimani Criminal Case No. 1151 of 2009, Republic v Yagnesh Devani & 6 Others*.
 - v. That this Honorable court be pleased to review, vary, reverse, and/or alter the order issued on 18th November 2024 by the Honorable Trial Magistrate in *Milimani Criminal Case No. 1151 of 2009, Republic v Yagnesh Devani & 6 Others*.
 - vi. That cost of this application be provided for.
2. The application was expressed to be brought under Articles 25, 50 (1) (2) 157 (6), 159 (2) (d) and 165 (6) of the Constitution of Kenya 2010.
The applicant also cited the provisions of Sections 87 (a) , 135 (3) , 194, 206, 207, 362 and 364 of the Criminal Procedure Code.
 3. The applicant is not one of the persons facing trial in the Lower court thus the 1st issue that arises in the matter is his competence to seek stay of proceedings that do not directly affect him and his request to have this court review the Lower court's rulings delivered on 12th November 2024 and 18th November 2024 in *Milimani Criminal Case No. 115 of 2009 R. v Yagnesh Devani & 6 others*.
 4. The gist of the applicant's argument is that the learned Honorable Magistrate erred in his Ruling of 12th November 2024 in which he declined to terminate proceedings against the 1st Accused.
 5. The applicant's contention is that since the 1st Accused had not taken plea in those proceedings the case against him should not have been allowed to continue since it would eventually lead to an acquittal of the 1st Accused in the very end.
 6. According to the applicant, by this court intervening at this stage , the court will have averted an acquittal which according to the applicant is imminent.
 7. The applicant further contends that if the 1st Accused is eventually acquitted that would be against the public interest and that is the window through which he has come seek to prevent the abuse of the Criminal justice system with the sole aim of protecting public interest.
 8. The applicant was certainly not the applicant in the application seeking the removal of the name of the 1st accused in the proceedings in the lower court. The applicant was the Director of Public Prosecutions who has since not appealed against the Ruling of 12th November 2024.
 9. The applicant goes further to state that the 1st respondent/accused has a constitutional right to a fair trial but that doesn't equate to a bungled trial that is hastily conducted at the expense of justice.
 10. The applicant is further aggrieved by the decision of the learned Honorable magistrate dated the 18th November 2024 in which the learned Honorable magistrate arrived at the decision to place the 1st accused on his defense.
 11. The application is strenuously opposed by the state but is supported by counsel for the 1st respondent/ Accused.
 12. The 1st Accused has taken the position that allowing the matter to proceed to its logical conclusion would amount to a violation of his clients right to a fair trial.
 13. The 1st respondent in this application took flight from this country and he has for a period of about 11 years been in the U.K contesting his extradition to this country to face trial.



14. The 1st respondent further argues that to allow the matter against him to proceed would amount to abuse of the Criminal Justice process since even the D.P.P who is the prosecutor in the matter had after the close of the prosecution's case sought to have the name of the 1st accused / respondent removed from the proceedings.
15. Counsel for the 1st respondent argues that the 4th respondent DPP cannot be heard to oppose the present application yet it seeks to achieve the very same purpose they were unable to achieve through the Ruling delivered on 12th November 2024.
16. The 4th respondent through Ms. Ogega prosecution counsel opposed the application and, questioned the locus standi of the applicant to initiate the application.
17. According to counsel for the state the applicant has not addressed himself adequately to the provisions of Article 258(1) of the Constitution on the issue of public interest. Counsel maintained that there was no material presented to this court to demonstrate that the Constitution had been breached in any way in the course of the court proceedings.
18. The applicant was accused by the 4th respondent of failing to meet the specificity principle in prosecuting matters relating to alleged breach of the Constitution. The state argued that all that the applicant had done was to make generalized statements about the propriety of the rulings in the lower court but had not pointed this court to any specific constitutional violation.
19. Ms. Ogega cited the case of Kenya Anticorruption Commission v Deepak Chamanlal Kamani & 4 Others [2014] KECA 719 (KLR) in which the court held that for a matter to be said to be of a public interest nature it must be one that affects the whole society.
20. Counsel maintained that all that the applicant was raising were narrow interests of the 1st respondent to avoid justice and the application was solely meant to protect his interests and nothing more.
21. In any case, counsel for the 4th respondent submitted that the 1st respondent had been acquitted in other matters and this applicant had not told the court what he has done in respect of those other matters.
22. The state however conceded that they had sought to remove the 1st respondent in the matter in the court below but since the court had ruled on the application and there was no appeal either by the state or any of the accused, the rulings of 12th November 2024 and 18th November 2024 should not be disturbed.
23. The state concluded by arguing that allowing this application would simply benefit the 1st respondent who had remained a fugitive in law until his return to this country in 2024.
24. The state further urged this court to consider the ruling by the Learned Honorable Justice A. Mboghohi Msagha who had on the 28th may 2024 allowed proceedings in Milimani CM'c Criminal case number 1150 of 2009 Yagnesh Mohanlal Devani & Others to proceed to its logical conclusion and by parity of reason this court was similarly urged to allow the matter to proceed to its logical conclusion.

Analysis And Determination

25. The 2nd, 3rd, 5th and 6th Respondents were not represented at the hearing of this application despite service thus the court proceeded to hear the applicant and counsel for the 1st and 4th respondents.
26. The issue that I must deal with first is whether the applicant in this matter has the *locus standi* to bring to this court the instant application.



27. The issue of locus standi goes to the issue of jurisdiction which this court must dispose of in limine because jurisdiction is everything and without it all that are court does is a nullity. See *Owners of Motor Vessel Lillian v Clatex Oil Ltd (K)* [1989] eKLR .
28. The parties in a criminal trial are strictly:-
 - a. The accused
 - b. The state; and
 - c. The victim

The Criminal Procedure does not envisage the entry of other intervenors in the name of interested parties. The rest of the society can only participate as witnesses.
29. The Supreme Court in the celebrated decision of *Waswa v Republic* (Petition 23 of 2019) [2020] KESC 23 (KLR) (4TH September 2020) went into great length to address the place of the Director of Public Prosecution vis a victim in the Criminal Trial Process and in it also did cover the issue of interlocutory applications.
30. The revision before me precisely falls within the category of interlocutory applications which the Supreme Court decreed must be discouraged for they contribute to unnecessary delays in the criminal justice process.
31. The Criminal Procedure code does not make any provision for a person who is not a party in a criminal case to step in and seek through craft and innovation to file applications aimed at either aiding the accused person in a case or the state in any way.
32. The duty of the Director of Public Prosecutions to control prosecutions under Article 157 (10) is not a shared duty with general members of the public.
33. To allow a person who is not an accused or a direct victim in a matter to intervene in a criminal trial would be to set a very dangerous precedent. Mischief makers are many out there and they could very easily come under the veil of public interest litigation in a criminal proceeding to either ensure that an acquittal or a conviction is entered, at whatever cost.
34. The interest of the applicant in this matter is clearly discernible from the application and his submissions before this court. He has come in to help the 1st respondent to evade trial.
35. The applicant has tried to come under the admirable color of self -appointed protector of the public interest yet he is clearly interested in ensuring that the proceedings in the *Milimani Chief magistrate court Criminal Case Number 1157 of 2009/* are scuttled.
36. He has come to this court waving Article 258 (1) of the *Constitution* as the Constitutional anchor of his application and that he has passionately pleaded to be understood to be a well -meaning person whose desire is to see to it that's the 1st respondent is put through a credible criminal trial for he believes that what is currently happening in the lower court is a circus for lack of better word.
37. The mask he has worn of public interest intervener falls off when one looks at the prayers in his Notice of Motion.
38. The applicant seeks to have the two Rulings reviewed, varied reversed and or altered but cunningly doesn't say what should happen to the trial against the 1st respondent should this court accede to his request.



39. If indeed the applicant had moved to this court genuinely aggrieved by the rulings and was desirous to have the 1st respondent put through trial “procedurally” as he states then nothing would have been easier than for him to have made a prayer that the ultimate result should be that criminal proceedings be commenced against the 1st respondent should this court allow his application. His loud silence on that particular score speaks volumes about his intention in coming to this court.
40. The applicant thus meets the perfect description of a meddling interloper who is actuated by ulterior considerations perverse to the interests of the proper administrations of justice.
41. Following the promulgation of the Constitution of Kenya 2010 and the ensuing loosening of the rules of *locus standi* the country has witnessed an insatiable appetite of some individuals to approach courts under the pretext of public interest litigation but who in the real sense are pursuing personal or sectarian interests.
42. The courts must however remain vigilant and guard against the potential abuse of the provisions of Articles 22 and 258 (1) of the Constitution by individuals who are not interested in the pursuit of justice at all.
43. The applicant in this court’s view falls in that category for he is before this to simply pursue the interests of the 1ST respondent and not the sacred duty to ensure justice is done.
44. Public interest litigation is a weapon to be used with great care and circumspection. Courts must pierce through the beautiful veil of public interest to uncover any ugly private malice by all litigants. The courts must not shy away from dealing with imposters and busy bodies or meddling interlopers impersonating public spirited holy men.
45. A person acting bone fide and having sufficient interest in the proceeding will alone have *locus standi*- See Kusum Lata v Union of India and Others AIR 2006 Supreme Court 2643, 2006 AIR SCW 3543.
46. Piercing the veil in this matter I see an applicant who has arrogated himself the duty to fight the wars of the 1st respondent. He has not come to this court with clean hands and he is simply a mischief maker. He is seeking acquittal of the 1st respondent through this application.
47. In Black Law Dictionary (6th Edition) “ Public Interest” is defined as follows:-
 “Public interest is something in which the public or some interests by which their rights or liabilities are affected does not mean anything the particular localities which may be affected by the matters in question interest shared by national government..”
48. Further, In Stroud’s Judicial Dictionary volume 4 (IV Edition) ‘Public Interest’ is defined thus :-
 “Public interest a matter of Public or general interest does not mean that which is interesting as gratifying curiosity or love of information or amusement but that in which a class of the community have pecuniary interests, or some interests by which their legal rights or liabilities are affected.”
49. Taking into account the two sets of definition above the party who is squarely within his right to move this court on the ground of Public interest in a criminal trial is the 4th respondent the Director of Public Prosecutions.
50. The Constitution under Article 157 (11) places that responsibility on his shoulders thus if indeed the applicant is genuinely in the pursuit any public interest concern in this matter, he remains at liberty to



petition the 4th respondent to move on appeal against the ruling delivered on 12th November 2024 if he believes that there are arguable issues around it.

51. The function of this court in revision would be limited to considering the propriety, legality, correctness or the regularity of the rulings once moved by a party with the necessary *locus standi*.
52. The applicant has not met the locus standi tests thus the application is struck out.
53. It is so ordered.

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

A. M. MUTETI

JUDGE

In the presence of:

Court Assistant: Kiptoo

Ng'ang'a for the Applicant

Ms Ogega for the 4th Respondent

