



**Omake v Republic (Miscellaneous Criminal Application  
E059 of 2025) [2025] KEHC 5617 (KLR) (6 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5617 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
MISCELLANEOUS CRIMINAL APPLICATION E059 OF 2025**

**DR KAVEDZA, J**

**MAY 6, 2025**

**BETWEEN**

**INNOCENT OMACHE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant filed the notice of motion dated 19<sup>th</sup> March 2025 seeking to arrest the judgement of the trial court scheduled to be delivered on 8<sup>th</sup> May 2025. The application is supported by an affidavit sworn by the applicant of similar date.
2. The applicant contends that he is unlikely to receive an impartial determination, as the trial court denied him adequate opportunity to present his defence. It is alleged that the trial magistrate acted with bias by setting a judgment date without due regard to the principles of a fair hearing. There has been no undue delay in bringing this application. Further, the complainant and the applicant—who is the accused in the trial court—have since reconciled. In view of these developments and the alleged procedural irregularities, the applicant seeks the recusal of the trial magistrate and for the matter to commence de novo. He asserts that the manner in which the proceedings have been conducted amounts to a miscarriage of justice. Accordingly, he prays that the court grants the reliefs sought.
3. The application was canvassed by way of oral submissions which have been duly considered.
4. Whereas the *Criminal Procedure Code* provides for motions in the arrest of judgment in the High Court (See section 324 of the *Criminal Procedure Code*) it does not have a similar provision for trials in the lower courts. Section 324 states: -  
324.Motion in arrest of judgment



- (1) The accused person may, at any time before sentence, whether on his plea of guilty or otherwise, move in arrest of judgment on the ground that the information does not, after any amendment which the court has made and had power to make, state an offence which the court has power to try.
  - (2) The court may either hear and determine the matter during the same sitting, or adjourn the hearing thereof to a future time to be fixed for that purpose.
  - (3) If the court decides in favour of the accused, he shall be discharged from that information”
5. In the case of *Prasul Jayantil Shah v Republic; Joseph Karuoro Claudio (Interested Party)* [2022] eKLR Odunga J (as he then was) did stay the sentencing of the Ex parte applicant upon finding that there were exceptional circumstances in that case. It was his finding that the High Court generally has a power to stay proceedings at any stage of a criminal trial including at the tail end of the trial. He however held:
- “..... I must however state that it is not in every case that an applicant faces a jail term that the court will grant stay of sentencing or proceedings. To be able to obtain stay of criminal proceedings, particularly the sentencing part thereof, the applicant must show that there exist exceptional and compelling reasons...”
6. The applicant alleges that he has not received a fair trial and seeks the recusal of the trial magistrate, citing allegations of bias. He further claims that he was denied sufficient time to present his defence and that the trial court set the matter down for judgment without his input, despite his reconciliation with the complainant.
  7. Upon perusal of the lower court record, it is noted that the trial progressed seamlessly from 5th February 2024 to its conclusion on 26th February 2025. At no point during the trial did the applicant raise any complaint of bias or file an application seeking the magistrate’s recusal. Moreover, the applicant neither sought to recall any witnesses nor requested additional time to call witnesses in his defence. The claims raised in the present application are unsupported by any material evidence. Furthermore, there is no formal application or record before the trial court indicating that the complainant and accused have reconciled or that withdrawal of the matter has been sought on that basis.
  8. Upon careful consideration of the application, it is apparent that the applicant seeks to pre-empt the trial court’s judgment under the pretext of a motion to arrest judgment. However, he has failed to establish any valid or sufficient grounds to justify this court’s intervention or the granting of the orders sought.
  9. Upon consideration of the application, supporting averments, and applicable law, the application dated 19th March 2025 to arrest judgment in Kibera Magistrate’s Court Criminal Case No. E251 of 2024, *Republic v Innocent Omache*, is dismissed in its entirety.
  10. The applicant filed a similar application in Kibera High Court Misc. Criminal Application No. E080 of 2025, *Innocent Omache vs Republic*. Accordingly, the dismissal herein shall apply equally.
- Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 6<sup>TH</sup> DAY OF MAY 2025**

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**D. KAVEDZA**



## **JUDGE**

In the presence:

Nyambega for the Applicant

Mutuma for the Respondent

Tonny Court Assistant

