



Kigia v Director of Public Prosecution & 2 others (Miscellaneous Application E091 of 2024) [2025] KEHC 8092 (KLR) (10 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8092 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS APPLICATION E091 OF 2024**

SM GITHINJI, J

JUNE 10, 2025

BETWEEN

MICHAEL KUNGU KIGIA APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTION 1ST RESPONDENT

THE JUDICIARY (CHIEF MAGISTRATE MERU) 2ND RESPONDENT

LAW SOCIETY OF KENYA, MERU BRANCH 3RD RESPONDENT

RULING

1. For determination is the Notice of Motion dated 24/6/2024 brought under Articles 2 (1) (2) (3) (5) (6), 3(1), (19) (1), 20 (1) (2), 22 (3) (d), 23 (1) 3 (c) (d) (t), 27 (1), 28, 29 (a) (b) (c) (d) (e) (f), 31 (a) (b) (c) (d), 5 (1)(2), 47 (1), 49, 50 (b) (c) (d), 160 (1), 165 (6) and (7) of *the Constitution*, Order 51 of the Civil Procedure Rules and Section 3 and 3A of the *Civil Procedure Act*, seeking the following orders:
 1. Spent
 2. The Honorable Court do issue an order to stay the proceedings of CR. Case No.519 of 2024 in Chief Magistrate Court until this matter is heard and finally determined.
 3. After issuing order No. 2, this Honourable Court do issue an order to prosecute against the advocate Mugambi, other lawyers and C.1.D) [sic] officers who invaded, raided, inhumanly mistreated the appellant inside court not [sic] before public and along court [sic] corridors on 20^h March 2024 during the hearing of Cr.Case No. 368 of 2023 and Cr. Case No 427 of 2023 and hearing of High Court misc. applications No 25 of 2024 without court warrant /or court order and demeaned the proceedings of the courts.



4. This Honourable Court do issue an order [sic] the respondents herein be ordered Not [sic] to arrest the appellant/or/prosecuting or charging the appellant [sic] for any offence or charge of similar nature as violates his constitutional right as enshrined in the constitution of 2010 and is a protected Private Mediation Business as an issue that ought not be allowed in this country as had no jurisdiction to act with impunity and contravened appellants constitutional rights as is enshrined in the constitution of Kenya 2010 and none above Law and no sacred cows hence judicial suicide. [sic]
 5. Finally this Honourable Court do issue an order against judicial officers who uprooted the court documents in CMC No 76 of 2016 case in that is cover-up of judicial irregular and illegal criminal fraud as Cr. Case no. 519 of 2024 based on as appellant had complied will law and respondents preferring to charge the appellant herein is to cover the judicial officers involved as what happened on 14th February 2024 in chaotic manner inside court by respondents in court No.2. [sic]
 6. This Honourable Court do issue an order against the Chief Magistrate Courts in Kenya and especially MERU Law Courts to stop undermining the order/rulings/judgement of High Court judges and especially ruling issued by S.R.M Hon. Ndegwa on 22nd March 2024 as she has No respect to constitution of Kenya 2010 Chapter one (1) Article 2 (1) (2) (3) (5) (6)and 3(1), Article 10(1)Article 160 (5) (As inside court proceedings the lawyers ordered bond of Shs 1 Million and closer of Private Mediation Offices without evidence) and cannot be entitled to article 160 (5) hence violating Article 165(6) and (7). [sic]
 7. This honourable Court do issue an order to dismiss the CR. Case No.519 of 2024 as has No legs or tails as is based on pending matter before court that is unconstitutional or respondents do withdraw the case as No cancellation of Mediation Certificates from International body or from 1st group of advanced mediators and the pioneer group of chartered mediators C/N Kenya as a member since commerce 2018 (M.T.I) [sic]
 8. The Honourable Court do issue final orders that Private Mediation Office and mediator himself cannot be sued on flimsy grounds as charge of the offices shall cost shs 60,000/- per hour as mediators are paid hourly rate in the whole world and James Mangerare professor of mediation in U.S.A Africa was paid Kshs 300 Million within Seven (7) days dispute between Kenya Government county of Turkana and International oil companies in 2017 and an issue that respondents ought to take hid. [Sic]
 9. Cost of be condemned on respondents
2. In his affidavit in support of the application, the Applicant averred that Cr. Case No. 519/2024 was wrongly before the court and prayed for the setting aside of the ruling dated 22/3/2024, as it contradicted the ruling by Hon. Lady Justice T.W Wamae dated 19/12/2023. He maintained that he was a fully accredited mediator, and the closure of his office was unlawful.
 3. The 1st Respondent opposed the application vide the following grounds of opposition dated 23/10/2024;
 1. The instant application is misconceived, frivolous, vexatious, incompetent and an open abuse of the court process.
 2. The application is a derailment of the due process of the law.
 3. The applicant has not met the prerequisite requirements for the grant of the orders sought.



4. The instant application as presented has not complied with Rule 4 (1) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (the “Mutunga Rules”).
 5. The right to privately prosecute is a right provided for pursuant to section 88 of the *Criminal Procedure Code* but according to which one must approach the Magistrates’ Court and not the High Court.
 6. The application is without merit and should be dismissed with costs.
4. The Applicant swore a replying affidavit on 29/10/2024 in response to the grounds of opposition.
 5. The application was canvassed by way of written submissions which only the Applicant filed.

Determination

6. Having considered the application, the grounds of opposition and the submissions filed, what the Applicant is seeking in so many words is the stay of the criminal case No. 519/2024.
7. Before delving into the merits of the application, the Applicant alluded that the trial court’s ruling of 22/3/2024 contradicted the High court’s orders of 19/12/2023. Firstly, the proceedings in Criminal Case No. 519/2024 have not been availed, and therefore, it is difficult to discern the scope and context within which that ruling was made. Secondly, even if the said proceedings had been exhibited, this court, in its ruling of 19/12/2023 only dealt with the issue of transfer of Tigania Criminal Case No. E330/2023 and Meru Criminal Case No. E416/2023, and nothing more.
8. The Respondent lamented that the application was incompetent as it did not comply with Rule 4 (1) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules. That Rule provides that; “Where any right or fundamental freedom provided for in *the Constitution* is allegedly denied, violated or infringed or threatened, a person so affected or likely to be affected, may make an application to the High Court in accordance to these rules.”
9. With respect, the Applicant is not alleging violation of his rights under *the Constitution* per se, but rather an order to effectively stay the criminal charges he is facing. Further, the Applicant is appearing in person and he deserves to be cut some slack on strict compliance with procedure. Moreover, the court is enjoined by the provisions of Article 159(2)(d) of *the Constitution* to render substantive justice without undue regard to procedural technicalities.
10. On merits, the prosecutorial mandate of the 1st Respondent is underpinned under Article 157(6) of *the Constitution* as follows; “(6) The Director of Public Prosecutions shall exercise State powers of prosecution and may— (a) institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed; (b) take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of the person or authority; and (c) subject to clause (7) and (8), discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions under paragraph (b).”
11. Article 157 (10) of *the Constitution* provides that; “The Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority.”



12. In *Sylvester Gaitano Odhiambo v Republic* [2022] eKLR the court (G.V Odunga J, as he then was) expressed that; “36. Clearly, therefore whereas the discretion given to the 1st respondent to prosecute criminal offences is not to be lightly interfered with, that discretion must be properly exercised in the wider interest of the public. Otherwise if the Court finds that the discretion is being abused or is being used to achieve some collateral purposes which are not geared towards the vindication of the commission of a criminal offence, the Court will not hesitate to bring such proceedings to a halt. It is, however upon the applicant to satisfy the Court that the discretion given to the DPP to investigate and prosecute is being abused and ought to be interfered with...39. It must always be remembered that such applications do not deal with the merits of the case but only with the process. In determining the process the Court will inquire into such issues as whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters, whether the decision was irrational or tainted with such other factors as biased and whether the decision breached the legitimate expectations of the aggrieved person. This list is however not exhaustive. It follows that where an applicant sets out to have a determination on contested matters of facts and in effect urges the Court to determine the merits of two or more different versions presented by the parties the Court would not have jurisdiction in a judicial review proceeding to determine such issues. In those circumstances the parties are better left to resort to the normal forums where such matters ought to be resolved on their merits. It follows that judicial review proceedings are not the proper legal regime in which the innocence or otherwise of the applicant ought to be determined and a party ought not to institute such proceedings with a view to having the Court determine his innocence or otherwise as to do so in my view amounts to abuse of the judicial process. What is paramount is the question of fairness to the applicant in the institution and continuation of the criminal proceedings and once the Court is satisfied that the same are bona fides and that the same are being conducted in a fair manner, within the legal parameters recognised for the conduct thereof, the High Court ought not to usurp the jurisdiction of the trial Court and trespass onto the arena of trial by determining the sufficiency or otherwise of the evidence to be presented against the applicant. Where, however, it is clear that there is no evidence at all or that the prosecution’s evidence even if were to be correct would not disclose any offence known to law, to allow the criminal proceedings to continue would amount to the Court abetting abuse of the Court process by the prosecution.”
13. The Applicant is asking the court to look into the legality of the criminal charges pending before the trial court and determine his innocence. The court must resist that invitation, because to do so would be akin to usurping the powers of the trial court, which is properly seized with the matter.
14. I find that justice will be served by allowing the trial herein to expeditiously proceed to its logical conclusion so that the Applicant, who alleges to have been wrongly charged, can have his day in court to effectively challenge the charges. Ultimately, the Applicant can, in the unlikely event of dissatisfaction with the outcome of the trial, pursue his right of appeal before this court or commence malicious prosecution proceedings if the finding will be in favour of such.
15. Consequently, I find that the Applicant has not proved that the institution of the criminal charges against him and his subsequent prosecution were ill motivated, malicious or otherwise an abuse of the court process, to warrant this court’s intervention.
16. For the foregoing reasons, I inevitably find the application dated 24/6/2024 in want of merit and it is hereby dismissed.

DATED AND DELIVERED AT MERU THIS 10TH JUNE, 2025

S.M. GITHINJI



JUDGE

Appearances:-

Applicant -

Present in Person.

Ms. Adhi for the state.

