



Wanja v Director of Public Prosecution (Anti-Corruption and Economic Crimes Application 4 of 2023) [2025] KEHC 8782 (KLR) (Anti-Corruption and Economic Crimes) (18 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8782 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION AND ECONOMIC CRIMES APPLICATION 4 OF 2023
LM NJUGUNA, J
JUNE 18, 2025

BETWEEN

GRACE WANGARI WANJA APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTION RESPONDENT

RULING

1. The application before the court is the Notice of Motion dated the 25th March, 2025 brought under Articles 40, 47 and 159 of the *Constitution* and all other enabling provisions of the law. It is premised on the grounds set out on its body and supported by the annexed affidavit sworn by Grace Wangari Wanja, the applicant herein, on the 25th March, 2025. It seeks the following Orders;
 1. Spent
 2. This court be pleased to order the release of Ksh 650,000 (Kenya shillings six Hundred & Fifty Thousand only) to the applicant being the fine paid out in MCACC E007 of 2022.
2. The applicant depones that she was convicted by the Trial court in Milimani Chief Magistrate's court ACC case Number E007 of 2022 for three counts and sentenced to serve a prison sentence with an option of a fine of Ksh. 650,000. The applicant, then being in Custody paid the fine on the 26th June, 2023 through her then firm of advocates Messrs. Musyoki Mogaka & Co. Advocates.
3. That being aggrieved by the entire judgment and sentence, the applicant lodged an appeal against both the conviction and the sentence of the Trial court resulting into this appeal. That the appeal was heard and a judgment delivered on the 31st October, 2024 in which, the appeal was allowed, the conviction quashed and the sentence of the Trial court set aside.



4. That unfortunately, the High court upon discharging the applicant did not make an express order for the release/or refund of the fine to the applicant, and her attempt at claiming the sum was denied for the reason that the court did not expressly order for the release/refund of the fine to the applicant.
5. That the continued detention of the money is without justifiable reason, is unfair and prejudicial to the applicant, infringes on the applicant's right to property causing undue hardship, financial loss and inconvenience.
6. The application is opposed vide grounds of opposition dated the 25th April, 2025. The respondent has advanced the following grounds;
 1. Pursuant to the provisions of Section 355(1), when a case is decided on appeal by the High court, it shall certify its judgment or Order to the court by which conviction, sentence or order appealed against was recorded or passed
 2. The court to which the High court certifies its judgment or order shall thereupon, make such orders as are comfortable to the judgment or order of the High court, and if necessary , the records shall be amended in accordance therewith.
 3. The court should be satisfied that sufficient cause has been shown as to why the cash bail/fine should not be forfeited.
 4. The appellate court found that the prosecution evidence was not tight enough to sustain a conviction, thereby set aside the whole judgment and quashed conviction against the appellant
 5. The appellate court did not however pronounce itself on the refund of the fine paid by the applicant notably because no application was made by or on behalf of the applicant at that point in time.
 6. In the event the respondent prefers an appeal against the said judgment, and the same is admitted, then the appellant is not entitled to refund of the fine until the intended appeal is heard and determined.
 7. The court has considered the application and the supporting affidavit, and the grounds of opposition.
 8. The applicant herein was the accused person in Nairobi Milimani Chief Magistrate's Court Anti-Corruption Case No. E007 Of 2022 (R Vs Grace Wangari Wanja). The charge sheet preferred three offences against the applicant herein. The first count was the charge of conspiracy to commit an offence of corruption while the second and the third were for receiving a bribe.
 9. By the judgment of the Trial court dated the 26th June, 2023, the applicant was convicted of all the charges and sentenced to pay a fine of Ksh. 200,000 each for counts 1 and 2, or serve a jail term of two years and for count three, to pay a fine of Ksh. 250,000 or serve a jail term of three years.
 10. The applicant preferred an appeal against the judgment of the Trial court being ACEC Appeal Case No. 4 of 2023 and elected to pay the fine pending the hearing and determination of the appeal. After hearing the appeal, the High court found that the conviction was grounded on no evidence and in its judgment delivered on the 31st October, 2024 the court quashed the conviction and set aside the sentence and ordered that the applicant be released forthwith unless otherwise lawfully held.



11. That after delivery of that judgment, the applicant applied for the refund of the money she paid as fine but her request was declined for the reason that the Judgment did not provide for the refund of the fine, and she was advised to move the court appropriately and hence this application.
12. This court has perused the judgment that was delivered by the Judge in ACECA Appeal Case No. 4 of 2023 and this court notes that indeed, the applicant's appeal was allowed, the conviction quashed and the sentence set aside in all the three counts.
13. I have also perused the grounds of opposition filed herein, the respondent has not denied that the applicant's appeal was successful in all counts. The respondent did not file any appeal against the judgment of the High court allowing the applicant's appeal, and if any was filed the court has not been made aware of the same.
14. The only reason why the money has not been refunded is because the court did not pronounce itself on the refund of the fine notably because no application was made by or on behalf of the applicant at the point of delivery of the judgment.
15. The matter that was before the Trial court was a purely criminal matter and the court having found the applicant guilty and convicted her, she filed an appeal but also exercised the option of paying the fine pending the hearing and determination of the appeal.
16. The decision of the High court on appeal is final as the respondent did not appeal against the said judgment and, therefore, she is entitled to a refund of her money.
17. In view of the foregoing, I find that the application has merits and I hereby allow the same and order that the sum of Ksh. 650,000 be released to the applicant unless there is a good reason why the money should not be released to her.
18. It is ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 18TH DAY OF JUNE 2025

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L.M. NJUGUNA

JUDGE

In the presence of:-

No appearance for the Applicant

Mr. Mong'are for the Respondent

Court assistant – Adan

