



**Equity Bank Limited v Banking Fraud Investigations Unit; Kimani
(Proposed Interested Party) (Miscellaneous Criminal Application
E164 of 2023) [2025] KEHC 10491 (KLR) (Crim) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10491 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CRIMINAL

MISCELLANEOUS CRIMINAL APPLICATION E164 OF 2023

K KIMONDO, J

JULY 17, 2025

BETWEEN

EQUITY BANK LIMITED APPLICANT

AND

BANKING FRAUD INVESTIGATIONS UNIT RESPONDENT

AND

ANDREW MWANGI KIMANI PROPOSED INTERESTED PARTY

RULING

1. This is an application by Andrew Mwangi Kimani (hereinafter the proposed interested party) to be enjoined into the revision. The notice of motion is dated 25th September 2023 and predicated upon his deposition of even date. There is also a supplementary affidavit dated 13th March 2025.
2. The proposed interested party has lodged skeleton submissions dated 16th April 2025.
3. The motion is opposed by the applicant (hereafter Equity Bank) through a replying affidavit sworn on 30th January 2025 by Kariuki Kingori. In a synopsis, he deposed that given the nature of revision proceedings now before the High Court, there are neither grounds for joinder nor a place to stand for the victim or complainant.
4. However, on the date the matter came up for hearing, learned counsel for the bank did not appear.
5. The respondent on the other hand relied on a replying affidavit sworn by Chief Inspector Samuel Kirichu dated 15th November 2023 as well as another affidavit sworn on 25th March 2025 by Mediatrix Awino Otieno.



6. Learned prosecution counsel, Ms. W. Awino, informed me that the Republic has no objection to joinder of the interested party.
7. The brief history of this dispute is as follows: On 28th April 2023, the respondent was granted orders by the lower court to access books of account and other documents relating to the interested party's account at Equity Bank's Corporate Branch No. 00XXXXXXXXXXXX34 and his CDS Account 25XXXXXXXX98 (particulars withheld).
8. Those proceedings were in Chief Magistrates Criminal Application No. E1260 of 2023. The purpose of the warrants was to investigate an alleged offence of theft contrary to section 268 (1) as read with 275 of the *Penal Code*.
9. The bank was aggrieved by the wide scope and timelines of the order arguing that it was not only unjustified but also open to abuse. It thus brought this revision to the High Court through a Notice of Motion dated 15th May 2023.
10. On 17th May 2023, the High Court (Kavedza J) called for the original records of the lower court and also granted a stay of the orders issued by the Chief Magistrate.
11. I take the following view of the matter. The court has discretion to enjoin an interested party so long as the party can show it has a real stake in the outcome of the dispute. See generally Article 159 (2) of *the Constitution*. However, such an interested party cannot frame new issues for determination by the court. See Francis Karioko Muruatetu & another v Republic & 5 others Petition 15 & 16 of 2015 [2016] eKLR.
12. But even where such a party is admitted, his rights of audience are highly limited and circumscribed by the guidelines well laid out by the Supreme Court in Joseph Lendrix Waswa v Republic, Supreme Court Petition No. 23 of 2019 [2020] eKLR.
13. I stated at the beginning that learned counsel for Equity Bank did not attend to the hearing. I also stated that the Respondent does not oppose the motion for joinder. In view of the orders that I propose to make, it would be inopportune and prejudicial to delve any deeper into the merits of the original warrants issued by the subordinate court or the main revision now pending at the High Court.
14. I find that the complainant's interests are well safeguarded by the Director of Public Prosecutions (hereafter the DPP) who has filed a reply opposing the main revision. The power and independence of the DPP are firmly rooted in Article 157 of *the Constitution*.
15. In addition, these are revision proceedings brought under sections 362 to 364 of the *Criminal Procedure Code*. There is hence no standing for the complainant to address the court on the merits of the revision. In fact, the High Court is not obligated to hear any of the parties or their counsel when exercising the power of revision. Section 365 of the Code is explicit on that issue-

No party has a right to be heard either personally or by an advocate before the High Court when exercising its powers of revision:

Provided that the court may, when exercising those powers, hear any party either personally or by an advocate, and nothing in this section shall affect section 364(2).
16. Granted those reasons, I decline to admit the proposed interested party into the revision. The upshot is that the notice of motion dated 25th September 2023 brought by Andrew Mwangi Kimani is hereby dismissed.

It is so ordered.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OF JULY 2025.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of: -

Mr. Leibor for the applicant/interested party instructed by Kiproop & Company Advocates.

Mr. Muiruri for the applicant (Equity Bank) instructed by Waweru Gatonye & Company Advocates.

Ms. Awino for the respondent instructed by the office of the Director of Public Prosecutions.

Mr. E. Ombuna, Court Assistant.

