



**Republic v Directorate of Criminal Investigations & 3 others; Weru (Exparte Applicant)
(Judicial Review Application E079 of 2023) [2025] KEHC 9752 (KLR) (3 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9752 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
JUDICIAL REVIEW APPLICATION E079 OF 2023**

EM MURIITHI, J

JULY 3, 2025

BETWEEN

REPUBLIC APPLICANT

AND

THE DIRECTORATE OF CRIMINAL INVESTIGATIONS ... 1ST RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS 2ND RESPONDENT

THE CHIEF MAGISTRATE COURT KERUGOYA 3RD RESPONDENT

OFFICE OF THE ATTORNEY GENERAL 4TH RESPONDENT

AND

DAVID CHRISPO WERU EXPARTE APPLICANT

JUDGMENT

1. The ex parte applicant filed a notice of motion dated 3rd August 2023 seeking the following orders:
 1. Spent.
 2. Spent.
 3. An order of certiorari remove into this Honourable Court and quash the orders of 21st June, 2023 issued by Hon. Alex Ithuku to proceed with he hearing in MCCR/E411/2023 Republic-v-david Chrispo Weru & Another and the subsequent proceedings in court.
 4. An order of prohibition do issue prohibiting the Respondents herein, or any person acting under the authority, behest or directions from further prosecution of the ex-parte applicant in Kerugoya Chief Magistrates Criminal case No. MCCR/E411/2023 Republic-v-david Chrispo Weru Another.



5. Costs of this application be borne by the Respondents.
2. The application is based on the following grounds:
 1. The applicant is a male adult of sound mind aged 83 years and a Shareholder of Kerugoya Service Station Limited and is charged with the offence of stealing by directors contrary to section 282 of the Penal code in MCCR/E411 of 2022 at Kerugoya Law courts.
 2. On the 21st June 2023, Applicant produced a medical report from Kirinyaga County Referral Hospital which reported that he suffered from severe visual impairment and moderately severe sensorineural hearing loss which were likely to inhibit his performance at trial.
 3. The 3rd Respondent in discharge of its duty noted that the Applicant had underlying conditions that were likely to inhibit the Applicants right to fair trial but nevertheless directed that the case proceeds for hearing on the same day.
 4. The prosecution confirmed to court that it was ready to proceed and indicated it would be availing further documents even though on 26th October, 2022 it had confirmed that it would be relying only on Equity Bank Statements, KCB Bank statements and a Log book.
 5. The prosecution proceeded to call one witness to testify and after the hearing availed a huge bundle of documents to the Applicant.
 6. The Respondents decision to disregard the Ex-parte Applicant's age related ill health which would have an impact on his ability to be afforded a fair trial is contrary to the rules of natural justice and a violation of the Applicant's constitutionally guaranteed rights.
 7. The actions by the 2nd and 3rd Respondents were illegal in that they failed to advance the sole purpose of article 50(2)(i) of *the Constitution* of Kenya 2010 which is to avail the accused person sufficient time and facilities to enable him prepare his defence and challenge the prosecution's evidence at the opportune time both in cross-examination and in his defence.
 8. The applicant was given a period of less than 7 days to examine the bundle availed by the 2nd Respondent and proceed with the hearing on 6th September 2023 which was inadequate time and facility for the Applicant to prepare a defence.
 3. The applicant has supported his averments by a Verifying Affidavit dated 17th July, 2023 setting the facts relied on.
 4. The 3rd and 4th respondents opposed the application on the following grounds:
 1. That the application is intended to curtail the statutory obligations and duties of the 3rd Respondents herein.
 2. That the application is inviting this court to trespass into the arena specifically reserved for the criminal trial process and ought not usurp the constitutional or statutory mandate of the 3rd Respondent.
 3. That the charges in Kerugoya Chief Magistrates Criminal case No. MCCR/E411/2023 Republic-v-david Chrispo Weru Another were brought without any ulterior motive nor is there any impropriety on the part of the 3rd Respondent.



The Ex parte Applicant submissions

Abuse of power

5. The Respondents arrival at the decision to proceed with the hearing whilst a medical report attached to page 23 of the verifying affidavit dated 17th July, 2023 had been presented to court was illegal and lacked procedural propriety for being divorced from the goals of article 47 and 50 of *the constitution* of Kenya 2010 by failing to avail the ex-parte applicant an opportunity to be heard on his representations before court. The applicant relied on Republic v Public Procurement Administrative Review Board & 2 others Exparte Rongo University [2018] eKLR.
6. The Respondent acted in a manner contrary to Section 7(2)(a)(ii) of the Fair Administrative Actions Act to which the ex-parte applicant is entitled to adequate notice of the nature and reasons for the administrative action. The Respondent was not given any reasons as to why the court disregarded the medical report which depicted that the ex-parte applicant could not hear or see well.
7. The Respondents arrival at the decision to compel the ex-parte applicant to proceed with the hearing whilst he struggled to see or hear the proceedings was so unreasonable, ultra vires and illegal and constitutes a capricious exercise of the Respondents powers and limit the right to fair trial contrary to the provisions of article 25 (c) of *the constitution* of Kenya 2010.
8. The Respondent's decision to avail a huge bundle of documents which the Ex-parte applicant could not examine due to his vulnerability at the point of the hearing and directing that the case proceeds for hearing on 28th June 2023 was greatly prejudicial to the ex-parte applicant.
9. Contending that the proceedings of 21st June 2023 were illegal and the Respondents acted ultra vires, we urge the court to issue an order of Prohibition forbidding it from continuing with the proceedings therein in excess of its jurisdiction or in contravention of the laws of the land and a departure from the rules of natural justice.

2nd Respondent Submissions

10. They submit that in order to succeed in an application for Judicial Review, the Ex-Parte Applicant must show that the decision or the act complained of is tainted with illegality, irrationality and procedural impropriety which he has failed to demonstrate.

3rd and 4th Respondents Submissions

Whether the Applicant is inviting this court to trespass into the arena specifically reserved for the criminal trial process

11. The 1st Respondent instituted criminal proceedings against the ex-parte Applicant at the Chief Magistrate's Court at Kerugoya law courts.
12. Section 6 of the Magistrates' Court provides that the criminal jurisdiction of the Magistrates' Court shall be exercised in line with the provisions of the *Criminal Procedure Code* and any other written law. Such authority allows the Magistrates' Court to entertain criminal proceedings. In the circumstances the ground of illegality fails.
13. The court in George Joshua Okungu v Chief Magistrate's Court Anti-Corruption Court at Nairobi & another (2014) eKLR stated that the discretion to prosecute criminal offences is not to be lightly interfered with, that discretion must be properly exercised and where 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 such as with a view to forcing a party to submit to a concession of a civil dispute, the Court will not hesitate to bring such proceedings to a halt... ”

14. The Applicant has not adduced enough evidence proving that the prosecution powers are being abused and it was submitted that there is no ground to warrant the court's interference with the conduct of the criminal proceedings at the Magistrates' Court.

Whether the Applicant should be granted the orders sought

15. The Applicant seeks orders of Certiorari to quash the decision of the Respondent to charge and prosecute the Applicant and an order of prohibition prohibiting the respondents herein from further prosecution of the ex-parte applicant herein.
16. The Court in *Kuria & 3 Others vs Attorney General* [2002] 2 KLR 69 stated that a prerogative order is an order of serious nature and cannot and should not be granted lightly. It should only be granted where there is an abuse of the process of law, which will have the effect of stopping the prosecution already commenced. There should be concrete grounds for supposing that the continued prosecution of a criminal case manifests an abuse of the judicial procedure.
17. The Applicant has not sufficiently proven that the criminal proceedings amount to an abuse of the court process; therefore, we submit that the court should not grant the Applicant the orders sought.

Issue

18. Whether the applicant should be granted the orders of certiorari and prohibition.

Analysis

19. The Applicant filed a judicial review application dated 3rd August 2023 seeking orders of Certiorari for the purposes of quashing the decision of the 3rd Respondent to proceed with the hearing in Kerugoya Chief Magistrates Criminal Case No. E411 of 2023 *Republic v David Crispo Weru* and an order of prohibition prohibiting the respondents herein from further prosecution of the ex-parte applicant herein.
20. The core question which threads the application is whether the process of making or arriving at the decision to charge the ex-parte Applicant was tainted with illegality, irrationality and procedural impropriety, and whether the court may review and interfere with the trial of the ex-parte Applicant in *Kerugoya Chief Magistrates Criminal Case No. E411 of 2023 Republic v David Chrispo Weru* where the ex-parte Applicant is the accused person.

Whether the applicant should be granted the orders sought

21. The Applicant seeks orders of Certiorari to quash the decision of the Respondent to charge and prosecute the Applicant and an order of prohibition prohibiting the respondents herein from further prosecution of the ex-parte applicant herein.
22. The ex-parte applicant deposed that on the 21st June 2023, he produced a medical report from Kirinyaga County Referral Hospital which reported that he suffered from severe visual impairment and moderately severe sensorineural hearing loss which were likely to inhibit his performance at trial.



23. The 3rd Respondent in discharge of its duty noted that the Applicant had underlying conditions that were likely to inhibit the Applicants right to fair trial but nevertheless directed that the case proceeds for hearing on the same day.
24. The ex parte applicant submitted that the respondents' decision to proceed with the hearing while a medical report had been presented to court was illegal and lacked procedural propriety for being divorced from the goals of article 47 and 50 of *the constitution* of Kenya 2010 by failing to avail the ex parte applicant an opportunity to be heard on his representations before court.
25. He was not given any reasons as to why the court disregarded the medical report which depicted that the ex-parte applicant could not hear or see well.
26. Moreover, the ex parte applicant deposed that he was given a period of less than 7 days to examine the bundle availed by the 2nd Respondent and proceed with the hearing on 6th September 2023 which was inadequate time and facility for the Applicant to prepare a defence.
27. The 3rd and 4th respondents objected in their grounds of opposition that the application is inviting this court to trespass into the arena specifically reserved for the criminal trial process and ought not usurp the constitutional or statutory mandate of the 3rd Respondent.
28. They submitted that Section 6 of the Magistrates' Court provides that the criminal jurisdiction of the Magistrates' Court shall be exercised in line with the provisions of the *Criminal Procedure Code* and any other written law.
29. The court in *George Joshua Okungu v Chief Magistrate's Court Anti-Corruption Court at Nairobi & another* (2014) eKLR stated that " the discretion to prosecute criminal offences is not to be lightly interfered with, that discretion must be properly exercised and where 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 such as with a view to forcing a party to submit to a concession of a civil dispute, the Court will not hesitate to bring such proceedings to a halt... "

SUBDIVISION - Whether the decision was tainted with illegality and irrationality

30. The respondents submit that the applicant has not sufficiently proved that the criminal proceedings amount to an abuse of the court process; therefore, they submit that the court should not grant the Applicant the orders sought.
31. The ex parte applicant deposed that the respondents' arrival at the decision to compel him to proceed with the hearing whilst he struggled to see or hear the proceedings was so unreasonable, ultra vires and illegal.
32. Further, the actions of the 2nd and 3rd Respondents were illegal in that they failed to purpose of Article 50(2)(i) of *the Constitution* of Kenya 2010 which is to avail the accused person sufficient time and facilities to enable him prepare his defence.

Determination

33. The Court has not seen any evidence that the DPP was in its decision to charge acting ultra vires the proper purpose of a prosecution to charge criminal offences and punish offenders in accordance with the law. The mere fact that the facts relied on to prosecute a crime may also be relied on in a pending or



impending civil suit is not a bar to prosecution as set out in section 193 A of the *Criminal Procedure Code*, which provides:

“193A. Concurrent criminal and civil proceedings

Notwithstanding the provisions of any other written law, the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings.

[*Act No. 5 of 2003*, s. 79.]”.

34. The Judicial review proceedings herein are only valid to the extent that the trial Court is in the exercise of its criminal jurisdiction under section 6 of the Magistrate’s Act enjoined to observe the Bill of Rights in *the Constitution* of Kenya which guarantees a fair trial to all accused persons, and which under Article 19 is an integral part of Kenya’s democratic state and under Article 20 “applies to all law and binds all State organs and all persons.”
35. Under Article 50 (2 of *the Constitution* of Kenya to have adequate time and facilities to prepare a defence; to be informed in advance of the charge and evidence the prosecution intends to rely on, and to have reasonable access to that evidence; and to adduce and challenge evidence.
36. Article 50 (2) of *the Constitution* provides in full as follows:
 - “(2) Every accused person has the right to a fair trial, which includes the right—
 - a. to be presumed innocent until the contrary is proved;
 - b. to be informed of the charge, with sufficient detail to answer it;
 - c. to have adequate time and facilities to prepare a defence;
 - d. to a public trial before a court established under this Constitution;
 - e. to have the trial begin and conclude without unreasonable delay;
 - f. to be present when being tried, unless the conduct of the accused person makes it impossible for the trial to proceed;
 - g. to choose, and be represented by, an advocate, and to be informed of this right promptly;
 - h. to have an advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
 - i. to remain silent, and not to testify during the proceedings;
 - j. to be informed in advance of the evidence the prosecution intends to rely on, and to have reasonable access to that evidence;
 - k. to adduce and challenge evidence;
 - l. to refuse to give self-incriminating evidence;



- m. to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial;
- n. not to be convicted for an act or omission that at the time it was committed or omitted was not— (i) an offence in Kenya; or (ii) a crime under international law;
- o. not to be tried for an offence in respect of an act or omission for which the accused person has previously been either acquitted or convicted;
- p. to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
- q. if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.”

37. The subset rights to information of the charge in sufficient detail to answer it, prior information of the evidence relied on by the defence and opportunity to challenge such evidence and adduce rebuttal evidence as well as the provision of adequate facility for preparation of his defence requires, in this case, that the Petitioner who has been certified to suffer disorders of hearing and sight to be facilitated and provided with necessary the facility or equipment to enable him understand and follow his trial so that he can follow his trial and effectively exercise the right of fair trial to challenge evidence produced by the Prosecution and adduce evidence in his defence.
38. While the Court upholds the DPP’s mandate to prosecute and the trial Court to try criminal charges for alleged offences, it must also protect and enforce the rights of the accused to a fair trial in the circumstances of the particular case. In this case, upon the findings of the trial Court as to the accused’s disability, it is appropriate that measures to protect violation of the accused’s fair trial rights must be taken.
39. Consequently, only the order of certiorari to quash the proceedings of trial court taken without observance of the accused’s right to a fair trial may be granted. The Court considers that a proper trial of the accused despite the disabilities relevant in this case is possible if the prosecution and the trial Court makes the necessary facilitative arrangements.
40. The Court considers that the DPP must be given opportunity to propose adequate measures for such protection and in the meantime stay the criminal proceedings pending such provision of facilities for fair trial of the accused.

Orders

41. Accordingly, the Court having ascertained from the medical evidence given on the applicant that the applicant suffers a disability affecting his ability to follow the proceedings, the proceedings of the trial court taken without such measures for the protection and enforcement of his right to fair trial are



quashed and the Court grants the Order for certiorari as prayed in Prayer no. 3 of the Notice of Motion that –

“An order of certiorari remove into this Honourable Court and quash the orders of 21st June, 2023 issued by Hon. Alex Ithuku to proceed with the hearing in MCCR/E411/2023 Republic-v-david Chrispo Weru & Another and the subsequent proceedings in court.”

42. The prayer No. 4 for an Order of Prohibition to restrain further trial is declined.
43. The Prosecution must now indicate what measures it intends to take to ensure that his right to trial is not violated and, therefore, a Report on the measures that the Prosecution shall put in place for the giving effect of the rights to fair trial herein above identified by the Court shall be filed within 30 (days).
44. However, pending the confirmation by this court upon a report to be filed by the prosecution that measures have been taken for the assistance of the accused in challenging the Prosecution’s case, and the preparation and presentation of his defence, the trial before the trial court shall be stayed for thirty (30) days.
45. There shall be no order as to costs.
46. Mention on 4/8/2025 for directions.

Order accordingly.

DATED AND DELIVERED THIS 3RD DAY OF JULY 2025

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. Wairimu for Ex parte Applicant.

Mr. Mamba for the DPP

Ms. J. Edward and Mr. Kariuki for the AG.

