



**Mwaniki v Republic (Miscellaneous Criminal Application E293 of 2023)
[2024] KEHC 238 (KLR) (Crim) (23 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 238 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E293 OF 2023
K KIMONDO, J
JANUARY 23, 2024**

BETWEEN

PETER KAGUONGO MWANIKI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant prays for stay of proceedings in Milimani Chief Magistrates Criminal Case Number E1089 of 2021 in which he is charged with five counts of theft, forgery and uttering false documents. He also craves that the High Court be pleased to acquit him altogether of those charges.
2. The notice of motion is dated 26th July 2023 and predicated upon his deposition of even date.
3. The motion is strenuously opposed by the prosecution through Grounds of Opposition dated 8th October 2023.
4. On 8th December 2023, I heard further arguments from both learned counsel for the disputants.
5. The gist of the applicant's case is that there were previous criminal proceedings at the City Court in Criminal Case E4995 of 2020 which was settled and withdrawn on 25th March 2021. The typed proceedings in that case are annexed and marked PKM-6. He argues that the subsequent proceedings "though not the same [are] cognate....and is based on similar facts and circumstances".
6. The rebuttal by the Director of Public Prosecutions is that although the complainant and the accused are the same in both cases, the particulars and the sums in the two charge sheets are different. In a synopsis, it is contended that the withdrawal of the older case is not a bar to the subsequent prosecution.



7. I take the following view of the matter. Article 165 (6) of the *Constitution* confers the High Court with supervisory jurisdiction over all subordinate courts. Furthermore, and, by dint of sections 362 to 364 of the *Criminal Procedure Code*, the High Court is imbued with wide powers to review the impugned proceedings in the lower court.
8. In view of the nature of orders that I propose to make, it would be prejudicial to delve into the merits of the criminal charges now facing the applicant.
9. The background of the two cases is material: The applicant was for many years a care taker of an apartment block in South C Nairobi owned by the complainant, George Mbugua. Vide a complaint booked under OB No. 77/16/11/2020 the applicant was originally charged in City Court Criminal Case E4995 of 2020. It is not disputed, and it is apparent from the charge sheet (annexture PKM-3) that he was charged with 35 counts of theft of Kshs 832,000, making false documents or uttering false documents. Those offences took place between the dates of 1st June 2019 and 30th October 2020.
10. It is not also contested that those are the charges that were settled and withdrawn on 24th March 2021. To be fair to the applicant, there was a written settlement agreement under which the applicant transferred a motor vehicle KCM 218D to the complainant and also paid him Kshs 100,000.
11. But my perusal of the subsequent charge in Milimani Chief Magistrates Criminal Case E1089 of 2021, shows that the applicant is accused of theft of Kshs 2,048,400 and 4 counts of forgery and uttering false documents. Fundamentally, the offences are alleged to have taken place on diverse dates between 1st December 2017 and 28th February 2019.
12. Like I have stated, the applicant was a caretaker at the the complainant's premises for many years. Other than that common connection of master and servant, I am not satisfied that the latter criminal charge, on the face of it, relates to the same facts or particulars as those charged in the previous case. I say that very carefully and without making a final finding. The less I say about it the better.
13. For the same reasons, the prayer for acquittal by the High Court is unmerited.
14. The upshot is that the entire notice of motion by the applicant dated 26th July 2023 is hereby dismissed.
It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF JANUARY 2024.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of:

Mr. Mongare for the respondent instructed by the office of the Director of Public prosecutions.

