



**Rosalia Bloom Limited & 2 others v Republic & another (Anti-corruption and Economic Crimes Miscellaneous E045 of 2023) [2024] KEHC 661 (KLR) (Anti-Corruption and Economic Crimes) (1 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 661 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**ANTI-CORRUPTION AND ECONOMIC CRIMES**  
**ANTI-CORRUPTION AND ECONOMIC CRIMES MISCELLANEOUS E045 OF 2023**  
**EN MAINA, J**  
**FEBRUARY 1, 2024**

**BETWEEN**

**ROSALIA BLOOM LIMITED ..... 1<sup>ST</sup> APPLICANT**  
**RANJEETA PANDEY RAI ..... 2<sup>ND</sup> APPLICANT**  
**SHAILESH KUMAR RAI ..... 3<sup>RD</sup> APPLICANT**

**AND**

**REPUBLIC ..... 1<sup>ST</sup> RESPONDENT**  
**DIAMOND TRUST BANK LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This Revision application was brought to the attention of this court through the Notice of Motion dated 5<sup>th</sup> December 2023 which was filed through a certificate of urgency of even date.
2. The application seeks a review of the ruling of the lower court dated 3<sup>rd</sup> October 2023 which dismissed the Applicant's application dated 12<sup>th</sup> September 2023 which sought to overturn orders pertaining to freezing of their bank accounts. By the said ruling the court dismissed the application and directed that the accounts be frozen pending hearing and determination of their trial before that court.
3. In summary, the grounds for the application are that the learned Magistrate who issued the orders acted arbitrarily; that the orders were not merited; that the orders flouted the mandatory provisions of Section 238 of the *Companies Act* 2015 as there was no complaint lodged by Heritage Flowers Limited which was the complainant in the criminal case hence there was no legitimate complaint; that the Respondent had solely invoked Section 180 (1) of the *Evidence Act* which does not provide for freezing of accounts but merely their inspection and investigation of the accounts, but not Sections 118 and



121 of the Criminal Procedure Code and further that the learned magistrate ignored that the orders were not merited.

4. The application invokes the powers of revision and review vested upon this court by Sections 362 and 364 of the Criminal Procedure Code and Article 165 of the Constitution which state: -

“362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

....

364.

- (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may -
  - (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
  - (b) in the case of any other order other than an order of acquittal, alter or reverse the order.
- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:  
Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.
- (3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.
- (4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
- (5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”



5. The relevant provisions of Article 165 of the Constitution are sub-articles (6) and (7) which state: -

“ 165

- (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
- (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”

6. The manner of exercising the court’s powers of revision have been the subject of various cases. In the case of Joseph Nduvi Mbuvi v Republic [2019] eKLR the court stated: -

“In my considered view, the object of the revisional jurisdiction of the High Court is to enable the High Court, in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court’s revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well.”

7. In the case of Prosecutor v Stephen Lesinko [2018] eKLR Nyakundi J, outlined the circumstances in which a court should exercise the power of revision under Section 362 of the Criminal Procedure Code as being: -

- a. Where the decision is grossly erroneous;
- b. Where there is no compliance with the provisions of the law;
- c. Where the finding of fact affecting the decision is not based on evidence or it is a result of misreading or no reading of evidence o record;
- d. Where the material evidence of the parties is not considered; and
- e. Where the judicial discretion is exercised arbitrarily or perversely if the lower court ignores facts and tries the accused of lesser offence.

8. By the impugned ruling the learned trial magistrate froze certain accounts belonging to the Applicants herein pending hearing and determination of a criminal case facing them in her court. In so doing she invoked the provisions of Sections 180 of the Evidence Act, and Article 159 of the Constitution. She also placed reliance on the case of Samuel Wetatua & Another v Republic Criminal Appeal No. 2 of 2013 where the court dwelt on the limitation posed by Section 180(1) of the Evidence Act, hence the need to invoke Sections 118 and 121 of the Criminal Procedure Code.



9. It is the Applicant's case however that in so doing the learned magistrate misdirected herself as Section 180 of the Evidence Act does not provide for freezing of accounts and that in any event the order for freezing of the accounts pending determination of the trial was misguided as the accounts were not the subject of a prior freezing order.

10. I have carefully considered the arguments put forth by Counsel for the Applicant. It is indeed correct that read alone Section 180 of the Evidence Act does not give the court power to freeze a bank account but merely gives power to the court to issue a warrant for the investigation of an account. That is as was stated by Waki J, (as he then was) in the case of Erastus Kibiti Stephen v Euro Bank Limited and the Commissioner of Police [2003] eKLR there was need for reform in the law so that it could go further to provide for preservation of the accounts. Waki J (as he then was) observed:-

“On the plain reading of the section this is indeed so. But one may loudly wonder why the law should permit the inspection of Banker's Books which by definition includes ledgers, day books, cash books, accounts books, and all other books used in the ordinary business of the Bank, which in this day and age would cover computer records. When it does not safeguard the funds existing in those Accounts! Take this case: the facts presented are that a large amount of public funds suspected to have been stolen were hidden in the Accounts sought to be inspected. The same funds had earlier been withdrawn and reinvested in different Accounts even when the investigators were busy inspecting the Bankers Books under other warrants of inspection granted by the Court. How else would the investigator ensure that “the horse has not bolted from the stable” as it were, before he finalises his inspection?

The answer lies I think in enacting a law, whether substantive or procedural to resolve that difficulty. It is not the first time the difficulty has arisen as there are at least three cases already decided by the High Court in the last two years highlighting it. There has been no challenge to those decisions.”

11. The difficulty expressed by Waki J (as he then was) seems to me to have been resolved by the Court of Appeal in the case of Samwel Watatua & Another v Republic Criminal Appeal No. 2 of 2013 (unreported) when the court stated: -

“A reading of Section 180 of the Evidence Act together with Sections 118 and 121 of the Criminal Procedure Code leaves no doubt in anybody's mind that the court, upon application, has power not only to authorize access by police to bank accounts of suspected criminals but also to freeze those accounts for the purposes of preserving evidence and the subject matter of the alleged crime.

.... in this case we find that the limitations in Section 180 of the Evidence Act together with Sections 118 and 121 of the Criminal Procedure Code are in consonance with Article 24 of the Constitution.”

12. In the premises I find that the gap referred to in the Erastus Kibiti Stephen case (supra) by Waki J (as he then was) is addressed by reading Section 180(1) of the Evidence Act together with Sections 118 and 121 of the Criminal Procedure Code as the court did in the Watatua case. The trial magistrate did not therefore misdirect herself when she granted the order as she had jurisdiction to do so under Sections 118 and 121 of the Criminal Procedure Code. It is instructive that the application made before her was not one for preservation of property such as is envisaged under the Proceeds of Crime and Money Laundering Act (POCAMLA) which must be made to the High Court but one for preservation of the monies which form the criminal case against the Applicants. My reading of the submissions and



the ruling is that the application was to preserve the monies which were the subject of the criminal proceedings/case before her. A perusal of the charge sheet annexed to this application reveals that there were funds involved and that the Applicants herein were accused of stealing those funds. Ms. Heritage Flowers Limited is named as the complainant in the charges. In my view therefore the learned trial magistrate acted within her powers as provided in Section 121(1) of the [Criminal Procedure Code](#) which states: -

“ 121.

(1) When anything is so seized and brought before a court, it may be detained until the conclusion of the case or the investigation, reasonable care being taken for its preservation.” (Emphasis mine)

13. The Learned trial magistrate ought to be given a free hand in the conduct of proceedings before her unless in the circumstances set out in Section 362 of the [Criminal Procedure Code](#) which in my view do not exist in this case. In the premises I find no merit in this application and the same is dismissed.

14. As the proceedings are criminal in nature there shall be no order for costs.

**SIGNED, DATED AND DELIVERED VIRTUALLY THIS 1<sup>ST</sup> DAY OF FEBRUARY, 2024**

**E N MAINA**

**JUDGE**

In the presence of:

Mr. Githui for the Applicant

Mr. Shah for the 2<sup>nd</sup> Respondent

No appearance for the DPP

Court Assistant – Karanja

