



Suri v Court & another; Nokia Corporation & 2 others (Interested Parties) (Criminal Revision E099 of 2021) [2024] KEHC 598 (KLR) (Crim) (1 February 2024) (Ruling)

Neutral citation: [2024] KEHC 598 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E099 OF 2021
K KIMONDO, J
FEBRUARY 1, 2024**

BETWEEN

RAJEEV SURI APPLICANT

AND

THE CHIEF MAGISTRATES COURT 1ST RESPONDENT

TECHNOSERVICE LIMITED 2ND RESPONDENT

AND

NOKIA CORPORATION INTERESTED PARTY

ROSCHIER ATTORNEYS LIMITED INTERESTED PARTY

AAPO SAARIKIVI INTERESTED PARTY

RULING

1. This ruling disposes of the main revision by the applicant, Rajeev Suri, dated 21st April 2021 and which was predicated upon his deposition of even date.
2. Prayers 1, 2 and 3 of the motion are spent. That leaves only the following two and which I will set out verbatim-
 - i. An order be issued to set aside, vacate, quash and or vary the orders given on 7th April 2021 by Hon. D. M. Ndungi (PM) in Milimani Criminal Case 171 of 2021 Technoservice Limited v Nokia Corporation & others ordering the applicant to appear in court for purposes of taking virtual plea on 28th April 2021 notwithstanding failure to swerve personally him with summons



- ii. Costs of this application be borne by the respondents in any event.
3. The decision of the lower court is impugned the impugned for holding that sections 91 to 98 of the *Criminal Procedure Code* relating to service of summons were mere technicalities; or, that the private prosecutor was only required to comply with the code “as much as possible”.
4. The applicant, a former Chief Executive Officer of Nokia Corporation (the 1st interested party), further contends that the private prosecution commenced by Technoservice Limited (hereafter the 1st respondent or the private prosecutor) is actuated by malice and only meant to vex him and ruin his reputation.
5. In particular, he avers that he had no personal connection and is a complete stranger to the allegations of joint criminal liability by the 1st to 3rd interested parties. He argues that he is “being targeted...simply because of his position as a former chief executive officer of Nokia Corporation”.
6. Fundamentally, he asserts that he resides out of the jurisdiction of the Republic of Kenya and that it was thus erroneous for the learned trial magistrate to order that he be served by electronic means; and, that he appears for plea virtually. He also takes on cudgels to the exemption of the private prosecutor from compliance with sections 91 to 98 of the *Criminal Procedure Code* dealing with service of summons.
7. The brief background of this matter is as follows. The 1st respondent instituted a private prosecution against the applicant and the interested parties at the Chief Magistrates Court at Nairobi (the 2nd respondent) in Milimani Criminal Case 171 of 2021.
8. The complainant was aggrieved by the “illegal” procurement and use of its confidential tax information and company registry records in arbitral proceedings before the International Chamber of Commerce in ICC Case 23513/FS *Technoservice Limited v Nokia Corporation*. The materials were allegedly used in support of a Request for Security of Costs dated 9th November 2018 by the 2nd interested party.
9. The private prosecutor sought leave in the lower court to initiate the prosecution in Miscellaneous Application Number 4465 of 2019 vide the further amended notice of motion dated 25th September 2020. On 8th December 2020, the learned trial magistrate (E. Kimilu, PM), granted the leave. She also directed that the private prosecutor to “avail to court for review and approval the draft charge sheet” within 30 days. In addition, the office of Director of Public Prosecutions was at liberty to take over the proceedings.
10. On 20th January 2021, the trial court (D. M. Ndungi, PM) approved the charge sheet and set directions for 27th January 2021 and listed the taking of plea for 28th April 2021 and issued the impugned directions for electronic service of the summons and for virtual appearance by the accused.
11. The application for revision is supported by the 1st to 3rd interested parties. According to the learned counsel for the 1st interested party, the impugned orders and directions are fatally flawed for want of territorial jurisdiction; and, for non-compliance with the mandatory provisions of sections 91 to 98 of the *Criminal Procedure Code*. He argued that the learned trial magistrate overreached his jurisdiction because the locus in quo fell outside Kenya; and, that the 1st and 2nd interested parties reside abroad.
12. Learned counsel for the 2nd and 3rd interested parties associated himself fully with those submissions. He added that his client in Finland was merely acting in a dispute between the 1st interested party and the 1st respondent. In his view, the 1st respondent has “weaponized private prosecution” to resolve a civil dispute.



13. The revision is however fervently contested by the private prosecutor. The attack is four-fold: Firstly, that the application for revision is defective for failing to annex the impugned ruling of 7th April 2021; secondly, that it is a delaying tactic in view of previous proceedings at the High Court; thirdly, that it is res judicata; and, fourthly, that in all the circumstances of this case, the revision is unmerited.
14. On 15th December 2023, I heard further arguments from the disputants. I will deal with the key arguments by the disputants in the course of this ruling.
15. 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.
16. 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 or the interested parties.
17. The impugned private prosecution is not markedly different from one initiated by the Director of Public Prosecutions. However, criminal proceedings of the nature now before the lower court have grave consequences including possible convictions or even loss of liberty.
18. It is thus important for a private prosecutor and the trial court to ensure that the procedures applied do not violate the constitutional rights of the suspects to a fair trial. Sections 91 to 99 of the Criminal Procedure Code deal with, inter alia, the contents of summons, the manner of service, and the power of the trial court to dispense with personal attendance of accused.
19. It is not contested that the applicant resides out of jurisdiction of the Republic. Section 97 of the Code deals with the mode of service of an accused person resident outside the local limits of jurisdiction. It provides as follows-

When a court desires that a summons issued by it shall be served at a place outside the local limits of its jurisdiction, it shall send the summons in duplicate to a magistrate within the local limits of whose jurisdiction the person summoned resides or is to be there served.
[underlining added]
20. The trial court directed that service of summons upon the applicant and the interested parties be done electronically. It also dispensed with their personal attendance on the date of plea. As I will discuss shortly, some of these issues were canvassed and decided in a prior suit. The futility of the insistence of special service dictated by section 97 of the Code is demonstrated by the fact that the applicant appeared through counsel in the proceedings before the lower court where he raised preliminary objections on service of summons.
21. It may well be true that the email addresses used for service were incorrect; or, that the process server made a false deposition on service. I think the private prosecutor (who is a corporation) was rather casual about service on the applicant (a private person), but I say that obiter, in view of the orders that I propose to make.
22. I will now turn to the effect of previous proceedings on all of those issues: There was an earlier application for revision in High Court Miscellaneous Criminal Application E052 of 2021. It had been initiated through a notice of motion dated 22nd February 2021 by the applicant and the three interested parties challenging the earlier decision of D. M. Ndungi, PM dated 27th January 2021 requiring them to appear for plea virtually; and, directing that the summons be served by electronic mail.



23. On 18th March 2021, Ogembo J dismissed that revision. The decision has since been reported as [*Nokia Corporation & 3 others v Technoservice Limited & 2 others*](#) [2021] eKLR. The learned judge held-
- Considering all the circumstances of this case, I am not convinced that the applicants have proved any incorrectness, illegality or impropriety in orders of the lower court aggrieved of as to warrant the issuance of the orders of revision prayed for in this application. I find no merit in the application of the applicant dated 22.2.2021. I dismiss the same wholly. [underlining added].
24. Secondly, there was an earlier appeal being Nairobi High Court Criminal Appeal Number E055 of 2020, *Nokia Corporation & 3 others v Technoservices Limited & 3 others* challenging the grant of the leave to bring private prosecution by the learned trial magistrate (E. Kimilu, PM) dated 8th December 2020. That appeal was later withdrawn and does not thus affect my determination.
25. Thirdly, the applicant and the three interested parties sought leave to bring judicial review proceedings in High Court Judicial Review Application E046 of 2021. They sought to challenge the grant of leave to bring the private prosecution by the learned trial magistrate, E. Kimilu, PM, on 8th December 2020. Leave was denied by the High Court (Nyamweya J) on 1st April 2021. Again, those proceedings do not affect the decision that I am about to make.
26. However, and in view of the decision I cited earlier by Ogembo J in High Court Miscellaneous Criminal Application E052 of 2021, the present revision is clearly an abuse of process. The applicant was a party to that revision. The applicant has now tried to distinguish that revision as based on section 99 of the [*Criminal Procedure Code*](#) whereas the present revision is challenging the classification of sections 91 to 98 of the Code by the learned trial magistrate as “mere technicalities which could be cured by Article 159 of the [*Constitution*](#)”.
27. A further distinction, he argues, is that the current revision challenges the exemption of the private prosecutor from fully compliance fully complying with sections 91 to 98 of [*the Code*](#) on service of summons and in particular to an accused residing outside the local limits of jurisdiction of the trial court.
28. My immediate answer is that all of those arguments were made on 7th April 2021 before the lower court. The applicant and the three interested parties were represented by counsel and argued before the learned trial magistrate that the charges framed by the private prosecutor were irregular. In fact, the applicant (who was named as 3rd accused) raised a preliminary objection dated 7th April 2021 before the lower court contending, among other matters, that the summons had not been properly served on him as decreed by sections 92 (1) and 97 of the Criminal Procedure Code. It is instructive that the preliminary objection was to be heard on 28th April 2021 by the trial court.
29. Like I have stated, the applicant and the interested parties were aggrieved by the decision of the trial court made on 27th January 2021 and filed the original revision at the High Court which was dismissed on 18th March 2021.
30. On 7th April 2021, the learned trial magistrate deferred the plea to 28th April 2021 and ordered that “the summons to re-issue against all the accused persons to be served by the private prosecutor” and that the accused persons appear in court virtually.
31. It is offensive to have multiplicity of revisions on the same subject. It leads to unnecessary delays and costs. It is not even efficient use of scarce judicial resources. It was never intended for the High Court to micromanage every decision of the trial court. Furthermore, not every decision of the subordinate



court is amenable to revision; and, some of the decisions are best left to interlocutory appeals [in applicable cases only] or even final appeals. See *Joseph Bushebi v Republic & another*, Nairobi High Court, Criminal Revision E259 of 2022 [2023] eKLR.

32. The applicant feels strongly that the issues now raised were said to be premature; or, were not conclusively settled by Ogembo J. But the solution does not lie in isolating them and lodging a fresh revision primarily raising the same complaint on service of summons or the order to appear virtually for plea. So much so that the filing of this new revision, however well merited, is an abuse of process.
33. But if I be wrong on that finding, I also find that the present revision is res-judicata in view of the findings made by Ogembo J in *Nokia Corporation & 3 others v Technoservice Limited & 2 others* [2021] eKLR. I find that the principal issues now raised were determined in the previous suit. Doubt is completely removed by the prayers that were before the court captured in the first paragraph of the ruling made on 18th March 2021 and which I will set out verbatim-

The 4 applicants, Nokia Corporation, Roschier Attorneys Limited, Rajeev Suri and Aapo Saarikivi have filed this application against the 3 Respondents Technoservice Limited, the DPP and the DCI. The application is dated 22.2.2021. Prayers 2 of the application having been spent, the only substantive prayer coming up for determination is prayer 3. The same seeks that this Honourable court be pleased to set aside and or reverse the order/directions of the Hon. Learned Magistrate (Hon. D. M. Ndungi, PM) in Nairobi Criminal Case No. 171/2021, requiring the applicants to appear before him to take plea virtually and to be served with summons by electronic mail. This application is brought under section 362 and 364 of the criminal Procedure Code and also Articles 165(6) and (7) of the *Constitution* of Kenya. Same is supported by the affidavit of the 4th applicant sworn at ESPOO, Finland on 19.2.2021. [underlining added].

34. Like I stated earlier, that motion was dismissed by the court on 18th March 2021. The learned judge held that “the applicants have [not] proved any incorrectness, illegality or impropriety in orders of the lower court aggrieved of as to warrant the issuance of the orders of revision prayed for in this application”
35. I thus readily find that the present application for revision is clearly res judicata. See generally, Black’s Law Dictionary 10th Edition 2014, Thomson Reuters, at page 1504 defining it as “an issue that has been definitively settled by a judicial decision”. See also Supreme Court in *Mawathe Julius Musili v IEBC & another*, Supreme Court Petition 16 of 2018 [2018] eKLR, *John Florence Maritime Services Ltd and another v CS for Transport and Infrastructure & others* (2015) 2 EA 236, *Kamunve & Others v the Pioneer General Assurance Society Ltd* [1971] EA 263.
36. That finding is sufficient to dispose of this matter. Having reached that conclusion, it is no longer necessary to examine the other arguments made by the disputants. For all those reasons, the applicant’s Notice of Motion dated 21st April 2021 is hereby dismissed. I make no order on costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 1ST DAY OF FEBRUARY 2024.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of-

Mr. Kanja holding brief for Mr. Esmail for the applicant.

Mr. Taib, S.C. for the 1st interested party.



Mr. McCourt for the 2nd and 3rd interested parties.

Mr. Edwin Ombuna, Court Assistant.

