



Republic v Kathumi; Muthoni & another (Interested Parties) (Criminal Revision E089 of 2024) [2024] KEHC 5028 (KLR) (15 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5028 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL REVISION E089 OF 2024
LM NJUGUNA, J
MAY 15, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

JOSPHAT KARIUKI KATHUMI RESPONDENT

AND

DAVID KAMAU MUTHONI INTERESTED PARTY

RODGERS MUCHOKI KAMANDE INTERESTED PARTY

RULING

1. For determination is the notice of motion dated 24th April 2024 through which the intended interested parties seek the following orders:
 - a. Spent;
 - b. That they be granted leave to be enjoined as interested parties in the suit;
 - c. Spent; and
 - d. That the costs of the application be provided for.
2. The application is premised on grounds that on 07th March 2023, the intended interested parties, upon request from one Caroline Wambui Irungu, delivered 470 bags of cement at the respondent's premises. That the agreement was that payment would be made on delivery but once the goods were delivered, the said Caroline Wambui Irungu stopped picking calls, prompting them to visit the site. That upon arrival, they met the respondent who told them that he owned the construction site and that he had already paid the vendor who delivered the goods.



3. It was their case that once they figured out that something was wrong, they reported the matter to the DCI Embu Office and were issued with an OB Number. That while investigations were still ongoing, the respondent moved the court for release of the exhibits. They urged that it is in the interest of justice that they be enjoined in the suit as interested parties since they have a claim over the exhibits as well. The application was anchored on the provisions of section 9 of the [Victim Protection Act](#).
4. The applicant filed the revision herein dated 11th April 2024 under certificate of urgency, being aggrieved and dissatisfied by the order of Hon. M.N. Kinyua in Embu Chief Magistrate's Court Criminal Case No. E058 of 2024 given on 11th April 2024. It is seeking stay of execution of the order to release bags of cement, being exhibits, pending completion of investigations. In the supporting affidavit sworn by PC Christopher Karumba, it was deposed that the respondent faces the charge of obtaining goods by false pretenses contrary to section 313 of the Penal Code.
5. It was his averment that while investigations were ongoing, the respondent moved the court seeking release of the said exhibits. That the application was opposed by the applicant on the basis that there were other complainants in the matter who were also claiming ownership of the said exhibits. That, regardless, the court ordered release of the exhibits to the respondent.
6. The respondent opposed the intended interested parties' application herein through grounds of opposition in which he stated that the proposed interested parties are not parties to the case in Embu Chief Magistrate's Court Criminal Case No. E058 of 2024 and that the only complainant named by the police was Brian Muthuri. That they cannot anchor their application on section 9 of the [Victim Protection Act](#) since the proceedings herein are not a criminal trial. That the revision herein is merely to re-examine the record of the trial court to ascertain correctness, propriety or legality of the lower court order releasing the exhibits. That at this point, the court cannot be called upon to determine matters that were not canvassed at the trial.
7. The court directed the parties to file their written submissions regarding the application dated 24th April 2024. They all complied save for the applicant who had indicated that it did not object to the application.
8. The respondent submitted that section 362 of the [Criminal Procedure Code](#) limits the jurisdiction of the High Court to examine the subordinate court's proceedings and not to determine the issues raised through the application dated 24th April 2024. That issue on joinder of parties is a new matter that was not canvassed at trial and so it cannot be considered through the revision application proceedings. That the intended interested parties' claim that they have a stake in the exhibits should be determined in a civil suit and not herein. That the rights of the intended interested parties under section 9 of the [Victim Protection Act](#) and the Rome Statute provide for the rights of victims in criminal trials only.
9. The intended interested parties submitted that the bags of cement were taken by Caroline Wambui Irungu who also allegedly sold them to the respondent. It was their argument that they are the legitimate owners of the goods which makes them victims within the meaning of section 2 of the [Victim Protection Act](#). That according to section 9(1) of the [Victim Protection Act](#), they can participate in the trial as victims, in line with Article 68(3) of the Rome Statute which is ratified by Kenya. They relied on the case of [Gideon Mwiti Irea v. DPP & 7 others](#), Petition 151 of 2015 (2015) eKLR where the court stated that a victim may adduce additional evidence according to Section 13 of the [Victim Protection Act](#).
10. The issue for determination is whether the application dated 24th April 2024 has merit.



11. The jurisdiction of the high court in criminal revisions is laid down under section 362 of the Criminal Procedure Code which states:

“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.”

12. The determination of a revision application is limited to the record of the subordinate court. In the Malaysian case of Public Prosecutor vs. Muhari bin Mohd Jani and Another [1996] 4 LRC 728 at 734, 735 it was held:

“The powers of the High Court in revision are amply provided under section 325 of the *Criminal Procedure Code* subject only to subsections (ii) and (iii) thereof. The object of revisionary powers of the High Court is to confer upon the High Court a kind of “paternal or supervisory jurisdiction” in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice...If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion...This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammelled and free, so as to be fairly exercised according to the exigencies of each case”.

13. The application at hand seeks to enjoin the intended interested parties in the suit. It is their case that they have an interest in the suit since the exhibits sought to be released belong to them. While the intended interested parties may have a claim, the jurisdiction of this court in these revision proceedings does not allow it to entertain this application. In my view, the application is better placed before the trial court where it can be authoritatively determined. If the application is entertained within a revision application, the court will have overstepped its mandate to call for and examine the subordinate court’s record to ascertain correctness of the orders therein. The trial is not over at the subordinate court and the revision herein is also pending determination. Whatever the case, the intended interested parties have an opportunity to canvass their application through the trial court.

14. Be that as it may, I find that the application lack merit and it is hereby struck out.

15. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 15TH DAY OF MAY, 2024.

L. NJUGUNA

JUDGE

.....for the Applicant

.....for the Respondent

....for the 1st Intended Interested Party

.....for the 2nd Intended Interested Party

