



**Sugawara v Republic (Miscellaneous Criminal Application  
E061 of 2023) [2024] KEHC 9706 (KLR) (23 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9706 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAJIADO  
MISCELLANEOUS CRIMINAL APPLICATION E061 OF 2023**

**SN MUTUKU, J**

**JULY 23, 2024**

**BETWEEN**

**PAULINE CHEMUGE SUGAWARA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant filed this Notice of Motion dated 23<sup>rd</sup> October 2023 seeking the following orders:
  - a. Spent.
  - b. That pending the hearing and determination of this instant application, the Honourable Court be pleased to stay proceedings in Kajiado Criminal Case No. 169 of 2018 *Republic v Pauline Chemuge Sugawara*.
  - c. That without prejudice to the above, the Honourable Court be pleased to call for, examine and review the file/record in Kajiado Criminal Case No. 169 of 2018 *Republic v Pauline Chemuge Sugawara*.
  - d. Any other orders the Honourable Court may consider appropriate in the circumstances.
2. The grounds supporting the above application are contained in the supporting affidavit sworn by the applicant. She has deposed that she was charged with forcible detainer contrary to section 91 of the [Penal Code](#) in respect of land title number Kajiado/Kitengela/10624 in Ngong Criminal Case No. 169 of 2018 *Republic v. Pauline Chemuge Sugawara*. She initiated Ngong Civil Case No. 74 of 2018 against Nairuko Ene Mutarakwa Kiruti and 3 others in respect of the same title which was dismissed. She filed an appeal at the ELC in ELCA No. E2 of 2020 which was determined. The decision of the ELC did not satisfy the Applicant. She filed an appeal at the Court of Appeal on 18<sup>th</sup> March 2022 in COACA/E141/2022 challenging the decision of the ELC.



3. She further stated that on 29<sup>th</sup> July 2022, the Court of Appeal issued an injunction restraining the Respondents from engaging selling, trespassing, alienating or interfering with the Applicant's peaceful possession, enjoyment and ownership of the property. The Applicant through her advocates made an oral application to the trial court to stay proceedings in the criminal trial pending hearing and determination of the Appeal but the application was disallowed.
4. The Applicant has stated that the continuation of the criminal proceedings while there exists an injunction issued by the Court of Appeal is tantamount to questioning and challenging the orders issued by the Court of Appeal and that there is risk of the trial court embarrassing itself should the Court of Appeal issue judgment that contradicts its findings.

### **Grounds of Opposition**

5. The Respondent filed Grounds of Opposition to the Application that the application is an abuse of the court process and is intended to delay or defeat the ends of justice; that it is against section 9(1)(b) of the *Victim Protection Act* which provides for the conclusion of cases in good time; that the application is a delaying tactic meant to interfere with the timely conclusion of the criminal case; that stay of the criminal case would be unfair to the Complainant who has waited for long for the conclusion of the case; that the Application is bad in law as it goes against the provisions of section 193A of the *Criminal Procedure Code*; that the grounds in support of the application do not fall within the parameters for grant of stay and that the Applicant has failed to demonstrate prejudice.

### **Submissions**

6. The Applicant in her submissions dated 30<sup>th</sup> November 2023 raised two issues for determination:
  - a. Whether the order dismissing the application for stay of proceedings pending the hearing and determination of the COADA/E141/2022 is merited?
  - b. Whether this Honourable Court should exercise supervisory jurisdiction by summoning, examining and reviewing the records in Ngong Criminal Case No. 169 of 2018?
7. Both issues were argued together. It was submitted that although section 193 of the Civil Procedure Code allows concurrent proceedings in civil and criminal cases and that this shall not be a ground for any stay, prohibition or delay in criminal proceedings, it is recognized in various authorities that the above provision is not absolute and that there are instances where stay of proceedings may be allowed. The Applicant cited *Lalchand Fulchand Shah v Investments & Mortgages Bank Limited & 5 others* [2018] and submitted that the Court of Appeal not only addressed the issue of concurrent jurisdiction but also stated that should the criminal proceedings be deemed oppressive, vexatious, an abuse of the court process, or violations of fundamental rights and freedoms, the High Court is vested with the authority to intervene.
8. The Applicant further cited *Maina & 4 others v Director of Public Prosecutions & 4 others* (Constitutional Petition E106 & 160 of 2021 (consolidated) [2022] KEHC 15 KLR where the Court stated that there was logic supporting the position that in instances of concurrent criminal and civil cases with similar facts and circumstances, the criminal case should be permitted to be heard and determined first. She submitted that the Court however remarked that the aforementioned general position was open to exceptions where the criminal case might violate the rights and fundamental freedoms of the accused or contravene the *Constitution* like in that case. It was submitted that if proceedings in the Ngong criminal case are not stayed, there could be significant repercussions if the



case is concluded and judgment is delivered prior to the Court of Appeal making a determination on the main appeal.

9. It was submitted that the High Court has supervisory jurisdiction over subordinate courts under Article 165 (6) and (7) of the *Constitution* and that under section 362 of the *Criminal Procedure Code* the High Court has powers “to 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.”
10. It was submitted that the order dismissing the application for stay of proceedings lacks merit. The Applicant urged this court to intervene and grant the orders sought in this application.
11. The Respondent has filed submissions on 25<sup>th</sup> January 2024, in which it is argued that the criminal trial in Ngong is ongoing and it would be premature to seek redress before this Honourable Court because such orders interfere with the trial process. The Respondent relied on *R. v. John Wambua Munyao & 3 others* [2018] eKLR where the Court stated as follows:
  33. Therefore it is my view that that jurisdiction should not be invoked so as to micro-manage the lower courts in the conduct and management of their proceedings for the simple reason that if every ruling of the Lower Court and which went against a party were to be subjected to the revisional jurisdiction of the Court, floodgates would be opened and the Court would be inundated with such applications thus making it practically impossible for the Lower Courts to proceed with any case to its logical conclusion.
  34. Where an issue arises as to whether the decision of the Court below is correct in its merits either as a result of wrong exercise of discretion or otherwise, but which decision does not call into question, its legality, correctness or propriety, the right approach is to appeal against the same preferably at the conclusion of the proceedings or in limited instances before then.
12. It was submitted that the Applicant has not demonstrated the prejudice she will suffer if the orders she is seeking are not granted given that she has a right of appeal after the conclusion of the criminal trial and the fact that the Applicant has lodged an appeal against the decision of the ELC does not affect the criminal proceedings.
13. It was submitted that section 193A of the *Criminal Procedure Code* allows concurrent civil and criminal proceedings; that the criminal trial is at an advanced stage. The Respondent relied on Misc. Criminal Application No. 4 of 2020 *Raymond Kipchirchir Cheruiyot & another v. Republic* where it was noted that the power to stay, discontinue, prohibit or quash criminal prosecutions must be exercised sparingly and with circumspection.
14. The Respondent submitted that the Applicant has failed to demonstrate that the proceedings in questions, if allowed to proceed, would amount to illegality, an abuse of the process or a travesty of justice and not be granted.

### **Determination**

15. I have considered the Application and the grounds advanced in support of the same. I have considered the Grounds of Opposition and the authorities relied on by both parties. I have understood the position of this matter. The Applicant was charged with the Criminal case in Ngong Chief Magistrate’s Court in respect to land parcel number Kajiado/Kitengela/10624 in 2018. I have noted there is an error in her Application in naming the Criminal case as having been filed in Kajiado Chief Magistrate’s Court. In the same year she instituted Civil Case No. 74 of 2018 between herself and *Nairuko Ene*



- Mutarakwa Kiruti & 3 others* in respect of the same parcel of land. The civil suit was dismissed. She appealed at the ELC Kajiado. The Appeal was dismissed. She went to the Court of Appeal. The Appeal is pending but she obtained an injunction against the Respondents.
16. She has now approached this court to stay the criminal proceedings pending the conclusion of the Appeal arguing that the Appellate Court may grant her a favourable determination which may embarrass the lower court.
17. Section 193A of the *Criminal Procedure Code* provides that:
- 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.
18. In *Amir Lodges Ltd & another v Mohammed Omar Shariff & another* [2022] eKLR, the Court, in dealing with the issue of stay of proceedings in concurrent criminal and civil proceedings in a case with similar facts and circumstances, and after discussing several authorities on the matter, stated that:
43. From the discussions in the superior Courts decisions and the other comparative decisions from foreign jurisdictions, the rule of the thumb in respect of concurrent criminal and civil proceedings based on similar set of facts and circumstances is that the criminal case ought to proceed unless it can be demonstrated that the prosecution of the criminal case will either result to infringement of the rights and fundamental freedoms of the accused persons or will lead to the contravention of the Constitution.
19. This brings me to the discussion of the issue as to whether the Applicant herein has demonstrated either that the prosecution of the Ngong Chief Magistrate's Criminal Case No. 169 of 2018 will result in infringement of her rights and fundamental freedoms or it will lead to the contravention of the Constitution. My understanding of the reasoning of the Applicant is that she holds the view that should the criminal proceedings are concluded and judgment issued before the Court of Appeal renders its decision, there is likelihood of confusion and embarrassment if both courts issues divergent consequences.
20. Guided by the provisions of section 193A of the *Criminal Procedure Code* and the above authority and taking into account the fact that the Applicant has not demonstrated that she will suffer prejudice or that her constitutional rights will be contravened, it is my finding the Applicant has failed to persuade this court to grant the orders she is seeking. It is my considered view that there is no prejudice that may befall the Applicant as a result of the continuation of the Criminal Proceedings.
21. This Application lacks merit and is hereby dismissed. I direct that each party bears own costs.
22. Orders accordingly.

**DATED, SIGNED AND DELIVERED THIS 23<sup>RD</sup> JULY 2024.**

**S. N. MUTUKU**

**JUDGE**

