



**Stasch v Republic (Miscellaneous Application E064 of 2024)  
[2024] KEHC 10762 (KLR) (17 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10762 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
MISCELLANEOUS APPLICATION E064 OF 2024  
DR KAVEDZA, J  
SEPTEMBER 17, 2024**

**BETWEEN**

**TILMAN STASCH ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. On 30th May 2024, the Chief Magistrate’s Court, Kibera issued warrants to No. [particulars withheld] PC George Mwangi OCS Parklands Police Station to investigate the books of bank accounts numbers: [particulars withheld] and [particulars withheld] both in the name of Dr. Tilman Stasch domiciled at I & M Bank. The officer was to investigate a case of stealing by directors contrary to section 268(1) as read with section 282 of the *Penal Code*, Cap 63 Laws of Kenya.
2. Through a letter dated 2nd September 2024, the applicant sought to set aside the orders of the subordinate court issued in Misc. Criminal Application No. E528 of 2024 the impugned orders herein.
3. The application is premised on the grounds that: The accounts indicated in the orders granted by the court ex parte are unknown to the applicant. The company under investigation was not shown. That the case under investigation by the police is tainted with non-disclosure of material facts. The criminal justice system is being used to settle a civil dispute.
4. Despite being served with the application, the respondent did not file a response to the application.
5. I have considered the application, the grounds in support, and the applicable law. I have been invited to invoke the court’s revisionary jurisdiction that is conferred upon this court by statute. Section 362 of the *Criminal Procedure Code* (CPC) provides:

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.

6. The jurisdiction is fundamentally invoked where there is incorrectness, illegality, and impropriety of the court's record. In the instant case, it is argued that warrants issued were done irregularly and orders obtained were contrary to the law.
7. The impugned application and orders granted were made under the provisions of Sections 118 and 121(1) of the [Criminal Procedure Code](#) and Section 180 (1) of the [Evidence Act](#).
8. Section 118 of the [CPC](#) provides that:

Where it is proved on oath to a court or a magistrate that anything upon, with or in respect of which an offence has been committed, or anything which is necessary for the conduct of an investigation into an offence, is, or is reasonably suspected to be, in any place, building, ship, aircraft, vehicle, box or receptacle, the court or a magistrate may by written warrant (called a search warrant) authorize a police officer or a person named in the search warrant to search the place, building, ship, aircraft, vehicle, box or receptacle (which shall be named or described in the warrant) for that thing and, if the thing be found, to seize it and take it before a court having jurisdiction to be dealt with according to law.

9. Section 180 (1) of the [Evidence Act](#) provides that:

Where it is proved on oath to a judge or magistrate that in fact, or according to reasonable suspicion, the inspection of any banker's book is necessary or desirable for the purpose of any investigation into the commission of an offence, the judge or magistrate may by warrant authorize a police officer or other person named therein to investigate the account of any specified person in any banker's book, and such warrant shall be sufficient authority for the production of any such banker's book as may be required for scrutiny by the officer or person named in the warrant, and such officer or person may take copies of any relevant entry or matter in such banker's book.

10. A reading of the law shows that a Magistrate/Court has the discretion to issue warrants authorizing a Police Officer to investigate or scrutinize the banker's books. Where there is suspicion of an offence having been committed, such warrants are applied for and obtained. The warrants can only be issued where evidence on oath is availed to establish that an offence has been committed or where it is reasonably suspected.
11. In the case of [Hassan Mohammed v Ethics and Anti-Corruption Commission and Another](#) [2019] eKLR; Ong'undi J gave the following guidelines on the ex parte issuance of search warrants by the Magistrate courts under Section 118 and Section 121 (1) [Criminal Procedure Code](#) and for proper management of the process:
  - i. Upon issuance of the orders under Section 118 and 118A of the [Criminal Procedure Code](#) the Magistrate must state the duration which the order shall remain in force.
  - ii. The duration shall not exceed 14 days.
  - iii. The court shall give a return to court a date soon after 14 days for the following purpose:
    - a. For the investigation to appraise the court on what he or she has done.
    - b. For the affected party to raise any issues it may have.



- c. The Court could extend the search warrant by maximum of 7 days if satisfied of need to do so.
  - d. The affected party must be served within 48 hours of the issuance of search warrants.
12. In the instant case, it is admitted that a complaint was made to the police who commenced investigations. There were allegations of stealing by directors which is an offence punishable in law. On the other hand, the applicant contends that the matter is civil in nature and the police are being used to settle scores. Affidavit Evidence availed indeed confirms that the applicant and the complainant entered into a joint venture and later got married in December 2018. This would therefore require the party aggrieved to seek redress in a civil court.
13. However, looking at the complaint raised in the affidavit in support of the application, it was an allegation of stealing by directors following the complainant's belief of the existence of theft which would have been to her detriment.
14. Once a complaint is lodged, the police have the mandate to investigate. In the case of *Commissioner of Police and Another Ex Parte Michael Monari & Another* [2012] eKLR Warsame J. (as he then was) held that:

“The police have a duty to investigate any complaint once a complaint is made. Indeed, the police would be failing in their constitutional mandate to detect and prevent crime if they do not investigate.”
15. To enable the police, to form the opinion of indicting the suspect they needed evidence from the Bank which could only be obtained following the issuance of a warrant to inspect books of accounts. The police approached the court and presented evidence on oath which made the trial court conclude that there was a necessity for investigations to be conducted. As provided in Section 118 of the *CPC*, a reasonable suspicion, if established would move the court to grant the order ex-parte. In the circumstances, the order made in Misc. Criminal Application No. E528 of 2024 was not irregular since the court directed that the matter be mentioned on 1<sup>st</sup> July 2024.
16. When the matter came up on 17<sup>th</sup> September 2024, the respondent had not filed a response to indicate whether they had concluded their investigations on the subject accounts. The impugned orders have been in force for over ninety (90) days. To my mind that is sufficient time to conclude any complex investigations.
17. Importantly, the trial court ought to have issued timelines within which the police should conclude their investigations and the duration which the order was to remain in force.
18. To preserve the interests of the parties concerned and the subject matter in question I hereby make the following orders:
  - I. I hereby vacate the orders issued by the subordinate court on 30<sup>th</sup> May 2024 in Kibera Chief Magistrate's Court Misc. Criminal Application No. E528 of 2024 *Republic v DTB Kenya Limited, I & M Bank Limited, Standard Chartered Bank Limited, Stanbic Bank Limited, KCB Kenya Limited and Safaricom Kenya Limited* issued on 30th May 2024.

It is so ordered.

**RULING DATED AND DELIVERED VIRTUALLY THIS 17<sup>TH</sup> SEPTEMBER 2024.**

**D. KAVEDZA**



**JUDGE**

