



REPUBLIC OF KENYA



**KENYA LAW**  
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**CLO v ODPP (Criminal Appeal E004 of 2023)  
[2024] KEHC 12549 (KLR) (18 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12549 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL APPEAL E004 OF 2023  
DO CHEPKWONY, J  
OCTOBER 18, 2024**

**BETWEEN**

**CLO ..... APPELLANT**

**AND**

**ODPP ..... RESPONDENT**

**RULING**

1. Before the court is the Notice of Motion application dated 12<sup>th</sup> May, 2023 seeking the following orders:
  - a. Spent.
  - b. That there be stay of proceedings in Thika Magistrate Court MCSO No. E112 of 2021 DPP v CLO pending the hearing and determination of this application interpartes.
  - c. That the Honourable court do proceed to terminate /discontinue the charges as against the accused person in Thika Magistrate Court MCSO No. E112 of 2021.
  - d. That costs of the application be in the cause.
2. The Application is based on the Supporting Affidavit of CO sworn on 12<sup>th</sup> May, 2023 and the grounds as set out on its face which are as follows:-
  - a. That the Respondent has declined to comply with the orders issued by this court on 28<sup>th</sup> February, 2023.
  - b. That the Appellant herein filed the petition of appeal herein together with a Notice of Motion application dated 13<sup>th</sup> January 2023.
  - c. That the Notice of Motion aforesaid was placed before the Judge and on 8<sup>th</sup> February, 2023 for interpartes hearing, the prosecution conceded to the request for age assessment of the minor and verification of the birth Certificate.



- d. That the court further proceeded to stay proceedings in the lower court for ten days only to enable the defence carry on the verification of birth certificate and have age assessed.
  - e. That the stay orders issued by the court have since lapsed.
  - f. That the consent order on age assessment was duly extracted and served upon the prosecution offices in Thika and in Kiambu.
  - g. That the Appellant herein further filed an application seeking for the interpretation of the court order allowing the complainant to undergo age assessment
  - h. That the Appellant herein could not undertake age assessment on the minor without a court directing the minor to present herself in a hospital for age assessment.
  - i. That the court directed the prosecution to assist the Appellant in having the Complainant attend age assessment at Thika Level 5 hospital.
  - j. That the prosecution has declined and is not assisting the Appellant in having the Complainant attend age assessment as ordered by the court.
  - k. That it is for this reason that the Appellant is now moving this court seeking for the prayers so stated in the application.
3. The Appellant similarly filed Submissions on 16<sup>th</sup> June, 2023 reiterating his arguments on the matter.
  4. The court has read through the record of proceedings, particularly the proceedings of 8<sup>th</sup> February, 2023 where the court ordered that verification of the birth certificate and age assessment to be done on the victim.

Consequently, the Appellant filed another application dated 20<sup>th</sup> February, 2023 seeking interpretation of these court orders. A Ruling was subsequently delivered on 11<sup>th</sup> May, 2023 when the court held that the issue of the age of the victim has been settled since the birth certificate was verified and the age was confirmed to be 17 years.

5. In the same ruling, the court held that it cannot stay proceedings of the trial court and the trial court also noted that as stated by the prosecution, that the Appellant was employing delay tactics which would lead to an impediment of justice. The court subsequently dismissed the application and vacated the orders for stay of proceedings in the lower court.
6. The Applicant has yet again filed another application seeking the same orders of stay of the proceedings of the trial court. This being the case, the court finds that it cannot therefore entertain this application as the same goes against the principles of res judicata and justice. If the Appellant was aggrieved with the Ruling of this court delivered on 11<sup>th</sup> May, 2023, then he had an option of lodging an Appeal to the Court of Appeal or filing an application for this court to review the orders.
7. In the upshot, the court proceeds to dismiss the application dated 12<sup>th</sup> May, 2023 and any stay orders that are in place in the matter are hereby discharged.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 18<sup>TH</sup> DAY OF OCTOBER, 2024.**

**D. O. CHEPKWONY**

**JUDGE**



In the presence of:-

Mr. Nduso counsel for Applicant

M/S Ndeda counsel for the Respondent

Court Assistant - Sanja

