



**County Secretary Trans-Nzoia County Government & another v Republic
through DCI HQRS Serious Crime Unit (Criminal Miscellaneous Application
E114 of 2023) [2024] KEHC 13534 (KLR) (18 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13534 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL MISCELLANEOUS APPLICATION E114 OF 2023**

A MSHILA, J

OCTOBER 18, 2024

BETWEEN

**COUNTY SECRETARY TRANS-NZOIA COUNTY GOVERNMENT 1ST
APPLICANT**

CEC FINANCE TRANS-NZOIA COUNTY GOVERNMENT 2ND APPLICANT

AND

REPUBLIC THROUGH DCI HQRS SERIOUS CRIME UNIT RESPONDENT

*(An application seeking revision of the Ex-parte Order delivered on 8th September, 2023
Kiambu Misc. Criminal Case No. E334 of 2023 issued by Hon. Manuela W. Kinyanjui)*

RULING

1. The application was brought under the provisions of Sections 362 as read with Sections 367 of the Criminal Procedure Code and all other enabling provisions of the law; The Applicants now seek a revision of the ex-parte orders and for the following orders;
 - i. This Hon. Court be pleased to order stay of further proceedings set for 5th October, 2023 and/or any other date and all consequential orders issued herein including the ex-parte orders 8th September, 2023 in Misc. Cr.Appl. Number E334 of 2023 R vs County Secretary Trans-Nzoia County Government and CEC Finance Trans-Nzoia County Government pending the hearing and determination of the application.
 - ii. This Honourable Court be pleased to call for and examine the record of proceedings in Miscellaneous Criminal Application Number E334 of 2023 Republic vs County Secretary Transzoia County Government and CEC Finance Transzoia County Government for the purpose of satisfying itself and pronouncing the correctness, legality or propriety of the ex-



parte orders issued on 8th September, 2023 by Hon. Manuela W. Kinyanjui as well as regularity of the proceedings giving rise thereto.

- iii. This Honourable Court be pleased to review, vary, reverse and/or set aside altogether the ex-parte orders of 8th September, 2023 issued in Miscellaneous Criminal Application Number E334 of 2023 Republic vs County Secretary Transzoia County Government and CEC Finance Transzoia County Government.
2. The application is based on the grounds that the Subordinate court lacked jurisdiction to issue ex parte blanket orders in a Miscellaneous Criminal Application Number E334 of 2023 Republic vs County Secretary Transzoia County Government and CEC Finance Transzoia County Government requiring the applicants to produce the unspecified documents in a Miscellaneous matter at Kiambu Law Courts.
3. Truphosa Amere filed her supporting affidavit on her own behalf and on behalf of the 2nd applicant. She deposed that on 8th September, 2023, the respondent through CI Protus Maeba, Number 237434 filed a Miscellaneous Criminal Application Number E334 of 2023 Republic vs County Secretary Transzoia County Government and CEC Finance Transzoia County Government where blanket orders of production were sought and the court proceeded to issue ex parte orders where the Applicants were required to produce the unspecified documents in a matter at Kiambu Law Courts. The matter was said to be coming up to confirm compliance. The respondent was said to have flouted the procedure for access of such information under the *Access to Information Act*, 2016 hence the prayer for review herein. The actions of the respondent amounted to harassment and punishment.
4. The parties were directed to canvass the application by way of written submissions; hereunder are the parties respective submissions;

Applicants' Submissions

5. The applicants submitted that the application has not been opposed as such the orders sought should be granted. It was also submitted that jurisdiction cannot be conferred through a police memo but by *the Constitution* or Statute. Reliance was placed in the case of Kenya Hotel Properties Limited vs Attorney General & 5 others (2018) eKLR. The alleged offence was committed outside Kiambu County as they fall under the territorial jurisdiction of the Kitale Law Courts. Further, it was submitted that the non-specific search for information was organized with ill-intended objectives as such unlawful hence the prayer for review as the procedure for access to such information as provided under the *Access to information Act*, was flouted. Reliance was placed on the case of *Commission for Human Rights & Justice (CHRJ) & another vs Chief Officer, Medical Services County Government of Mombasa & 3 others (Constitutional Petition E003 OF 2022)* KEHC 12994 (KLR). The subordinate court was said to lack powers to issue orders on matters that touch on the Public Procurement and Assets Disposal Act as they fall under the corruption court. The court was urged to set aside the orders granted as the applicants' right to be heard and the right to fair trial is an inalienable right.

Respondent's Submissions

6. The respondent in the oral submissions stated that the Investigating Officer moved the court vide their letter dated 14/7/2022 seeking information and the court granted the orders sought on 8/09/2023.

Issues for Determination

7. Upon reading the parties respective written submissions this court has framed the following issues for determination;



- i. Whether this is a suitable case for revision
- ii. Whether the trial court had jurisdiction to hear the ex-parte application and to issue the Orders;

Analysis

8. The High Court stems its supervisory jurisdiction from *the Constitution* of Kenya Article 165(6) (7) which provides that:

“(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”

9. The High Court also obtains its revisionary jurisdiction from the statute under Section 362- 364 of the Criminal Procedure Code. The court in exercising its discretion based on the above provisions is required to pay attention to circumstances of each case.

Whether this is a suitable case for revision; Whether the trial court had jurisdiction to issue the Orders;

10. The Applicants contend that on 8th September, 2023 the Respondent through CI Protus Maeba, Number 237434 through Miscellaneous Application Number 334 of 2023 moved the SPMs Court at Kiambu and was issued with blanket orders for production of unspecified documents for several companies for the last six financial years allegedly to aid the investigations in a matter no one has yet to be arraigned;

11. It was submitted that it was an undisputed fact that the Applicants are based in Kitale, Trans-Nzoia County and the companies in issue are also based in Kitale and the suspected offence was allegedly committed in Kitale therefore the subordinate court in Kiambu lacked territorial jurisdiction to entertain such an application.

12. Further that the subordinate court was not specially gazetted by the Hon. CJ to hear matters touching on economic crimes.

13. The Applicants also contend that the proper procedure to access information under the *Access to Information Act*, 2016 was fundamentally flouted by the Respondent;

14. In rebuttal, the Respondent submitted that it discharged its duty by following the right procedure to apply for the search warrants and contended that it lawfully sought and was granted the orders against the Applicants.

15. The applicable law is found at Section 118A of the Criminal Procedure Code and it states as follows;

“An application for a search warrant under section 118 shall be made ex-parte to a magistrate.”

16. The guiding principles in this instance are found at Section 4 of the Magistrates Courts Act, 2015 which reads as follows;



4. (1) The objective of this Act is to enable magistrate courts to facilitate just, expeditious, proportionate and accessible judicial services in exercise of the criminal and civil jurisdiction in this Act or any other written law.
- (2) The parties appearing in a magistrate's court and the duly authorised representatives of the parties, shall assist the magistrates' courts to further the principal objective of this Act.
17. The Applicants did not provide any evidence that the Companies in issue were solely registered and based in Kitale, Trans-Nzoia as contended; the alleged offences therefore could have been committed within the multiple territorial jurisdictions in which these companies operated; On the question of multiple territorial jurisdictions the provisions of Section 72 of the Criminal Procedure Code gives discretion as to the place of trial in such instances;
18. The determination on whether to issue the search warrants is a judicial process and at the discretion and wisdom of the issuing court; the onus therefore was upon the Applicants to demonstrate to this Court in which they seek revisionary orders that the Hon. Senior Principal Magistrates Court exercised the discretion improperly or un judicially; The challenge to the validity of the Orders and prayers that the same should be set aside is found to be without a legal basis;
19. This court is satisfied that the subordinate court discharged its mandate after exercising discretion and issued the said Orders; and is satisfied with the trial courts finding and that it had jurisdiction hear and to grant the Orders and finds no good reason to warrant interference.
20. Any constitutional rights that may have been contravened or violated such orders as sought can only be granted by the filing of a substantive Petition in court or Judicial Review to quash the orders;. The Applicants are at liberty to file a Petition or seek Judicial Review Orders;
21. In light of the above this court finds that no irregularities, illegalities or impropriety have been demonstrated in the conduct of the proceedings by the trial court so as to warrant the granting of the revisionary orders;

Disposition

22. For those reasons this court finds that the Applicants have not met the threshold for the grant of the prayers for revision; the application is found to be devoid of merit it is hereby dismissed.
- Orders accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 18TH DAY OF OCTOBER, 2024.

A. MSHILA

JUDGE

In the presence of

Mourice – Court Assistant

Gacharia – for the Respondents

Murumba h/b for Busiega – for the Applicants

