



**JNMM v Director of Criminal Investigation & 2 others; CNK
(Intended Interested Party) (Miscellaneous Criminal Application
E028 of 2022) [2023] KEHC 3585 (KLR) (Crim) (21 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3585 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E028 OF 2022
DR KAVEDZA, J
APRIL 21, 2023**

BETWEEN

JNMM APPLICANT

AND

DIRECTOR OF CRIMINAL INVESTIGATION 1ST RESPONDENT

NATIONAL POLICE SERVICE 2ND RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION 3RD RESPONDENT

AND

CNK INTENDED INTERESTED PARTY

RULING

1. The applicant (interested party), CNK, filed a Notice of Motion application dated 20/2/2023, supported by an affidavit of even date seeking to be enjoined as an interested party to the application dated 26/1/2023 filed by the respondent (JNMM) wherein he sought orders of anticipatory bail. Indeed, an order of temporary anticipatory bail was granted on 27/1/2023.
2. The applicant now prays to be enjoined as an interested party on the following grounds, that:
 - a. The applicant/respondent and the interested party were married couples but they divorced sometime in 2022 at the Kiambu Chief Magistrate’s Court Divorce Cause No E012 of 2022.
 - b. Sometime in the year 2018, the applicant/respondent assaulted the intended interested party/applicant herein.



- c. The intended interested party/applicant reported the assault at the Villa Imara Police Station but there were no charges pressed against the applicant/respondent.
 - d. The applicant has gone ahead to institute an application seeking anticipatory bail with allegations of malice based on unfounded facts, falsehoods and material non-disclosure painting the intended interested party/applicant in bad picture.
 - e. The allegations raised by the respondent/applicant re untrue and are meant to tarnish the interested party/ applicant's image and for that reason, the victim prays that the court allows her to be enjoined as an interested party.
3. Pursuant to the court's order dated 28/3/2023, the parties proceeded by way of oral submissions. It should be noted that the prosecution (State) did not oppose the application for the intended interested party/ applicant to be enjoined in the proceedings. The contest is therefore between the applicant (interested party) and the respondent.
 4. The application is vehemently opposed by the Mr Nzavi, counsel for the respondent. The grounds raised are that the applicant (interested party) is not a necessary party and has no business in these proceedings since she is well represented by the State (DPP). Further, counsel submitted that the applicant will have nothing of value to add to these proceedings if she is enjoined as a party.
 5. Mr Chimei on the other hand argued that it is only upon his client (the applicant/ interested party) making a complaint to Villa Imara Police Station that investigations against the respondent were commenced. He argued that without the applicant (interested party) lodging the complaint with the police, the respondent could not have filed an application for anticipatory bail.
 6. Counsel further submitted that section 29 of the *Victim Protection Act* No 17 of 2014 provides for participation of victims and gives guidelines on their participation.
 7. Counsel cited the case of *Director of Public Prosecutions v Perry Mansukh Kansagara & 8 Others* [2020] eKLR (Solai Dam Tragedy Case) where Richard Mwongo J allowed the victims to participate in the proceedings.

Analysis and Determination

8. Upon going through the affidavits of the parties and oral submissions by Mr Nzavi for the respondent and Mr Chimei for the applicant (interested party), I find one issue for determination: whether the applicant has the locus to participate in these proceedings?
9. My starting point will be to interrogate the role of the applicant (interested party) in the investigations being conducted by the police.
10. On January 25, 2023 the respondent was summoned by Mary Agalo, a police officer from Villa Police post who informed him that the applicant (interested party) had reported an assault case against him and that he was required to report to the police station for interrogation. It is then that he filed the application dated January 26, 2023 seeking orders of anticipatory bail.
11. I have carefully gone through the affidavits of the parties. It is clear that the applicant (interested party) and the respondent were husband and wife and that their marriage was dissolved. It is intrinsic to note that the applicant (interested party) had lodged a complaint of assault against the respondent at the



- Villa Imara Police Station. However, due to reasons not disclosed by the parties, the respondent was not arrested nor arraigned in court.
12. It is trite law that criminal investigations have no limitation of time and can be initiated at any time/ stage notwithstanding the duration taken after the commission of the offence. This perhaps explains why even though the complaint by the applicant (interested party) was lodged with the police in 2018, investigations against the respondent commenced in January 2023.
 13. The question that begs for an answer is whether this court has jurisdiction to interfere or stop the police from conducting investigations? I dare say no. The Court would be interfering with the duties and responsibilities of another state agency.
 14. It is therefore not in dispute that the applicant (interested party) has a stake in these proceedings because without her complaint, the respondent would not have filed the application dated January 26, 2023 before Court.
 15. From the notice of motion application dated January 26, 2023, the respondent has clearly indicated that his ex-wife (the applicant/ interested party) lodged a complaint of assault against him with the police in 2018. Furthermore, the respondent has made some allegations against the applicant (interested party), some of which are damning in the said application. For instance, at paragraph C of the respondent's notice of motion application dated January 26, 2023, the respondent alleges that the applicant (interested party) has fabricated a claim of forgery against him and reported the matter to Central Police Station leading to his arrest on January 19, 2023.
 16. Furthermore, at paragraph J the respondent prays for protection by the court to avoid harassment by the applicant (interested party). The respondent in his said application has also alleged harassment by the police. However, it is clear from the respondent's notice of motion application dated January 26, 2023 that it was only after the call by the police officer for him to report to Villa Imara Police Station for interrogation, that he filed the application for anticipatory bail.
 17. Indeed, the respondent was granted orders for temporary anticipatory bail in the sum of Kshs 50,000 (fifty thousand only). The question however is: did the grant of anticipatory bail include closing doors of justice for the applicant (interested party)?
 18. I do not think so for the following reasons. In the application dated January 26, 2023, the respondent has mentioned the applicant (interested party) as the originator of his woes. He cannot turn around and argue that the said applicant (interested party) should not be granted a hearing.
 19. The era of the Court not considering the views of victims in crime is long gone. The emerging jurisprudence, which has since crystalized and which flows from Article 50(9) of the Constitution and the Victim Protection Act No 17 of 2014 (VPA) and in particular section 9(2)(a) of the VPA is that victims too, have the right to participate in criminal proceedings and may in fact address the court as guided by the trial Judge.
 20. A criminal case is initiated by making a complaint by a victim followed by investigations. Clearly, without witnesses (victims) there can be no criminal proceedings.
 21. I therefore disagree with the respondent's counsel that the applicant (interested party) is not a necessary party to these proceedings. Similarly, I do not agree that the victim's voice should not be heard just because she is represented by the State. The locus classicus with respect to the issue of victims'



participation is the case of *Republic v Joseph Lendrix Waswa v Republic* [2016] eKLR where Justice Ali-Aroni (as he then was) held that:

“29. From the Cited Articles of the Constitution 2010, provisions of the Victim Protection Act 2014 and cases cited from within and outside, the law has shifted the traditional parameters of a victim in a criminal case and therefore the arguments advanced by the defence are certainly out of place and would if adopted by court be contrary to the provision of the Constitution and the Victim Protection Act, and by all means against progressive jurisprudence. The victims counsel can no longer be considered a passive observer.”

22. This case was litigated up to the Supreme Court of Kenya *Joseph Lendrix Waswa v Republic* [2020] eKLR where the Court observed as follows:

“71. Once a victim or his legal representative makes an application to participate in a trial, it is the duty of the trial Court to evaluate the matter before it, consider the victim’s views and concerns, their impact on the accused person’s right to a fair trial, and subsequently, in the judge’s discretion, determine the extent and manner in which a victim can participate in a trial. Since participatory rights are closely related to the rights of the accused and the right to a fair and expeditious trial, they should be granted in a judicious manner which does not cause undue delay in the proceedings and thus prejudice the rights of the accused.”

23. Having so stated, and as guided by the jurisprudence of the Supreme Court of Kenya as well as the *Constitution*, I find no merit in the objection raised by Mr Nzavi for the respondent. I accordingly allow the applicant (interested party) to be enjoined in the suit as an interested party.

24. It is so ordered.

RULING READ, DELIVERED AND DATED AT NAIROBI THIS 21ST DAY OF APRIL 2023

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D. KAVEDZA

JUDGE

In the presence of:

