



**Kariuki v Republic; Maina & 2 others (Interested Party) (Criminal Revision E101 of 2022) [2023] KEHC 3939 (KLR) (Crim) (5 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 3939 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL REVISION E101 OF 2022**

**K KIMONDO, J**

**MAY 5, 2023**

**BETWEEN**

**DANIEL KIMANI KARIUKI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**AND**

**SAMUEL KIARIE MAINA & 2 OTHERS ..... INTERESTED PARTY**

**RULING**

1. The applicant is aggrieved by the order or directions of the learned trial magistrate dated May 27, 2022 in Makadara Criminal Case 1235 of 2022. His request for revision is contained in a Notice of Motion dated June 10, 2022 and supported by a deposition of even date.
2. The background is that the applicant was charged in the lower court with three counts of assault causing actual bodily harm contrary to section 251 of the *Penal Code*; another count of theft contrary to section 268 (1) of the *Code*; and, a further count for failing to attend court contrary to section 131 of the *Code*.
3. He pleaded not guilty. The case has not been concluded. To be precise, no prosecution witness has taken to the stand. When the matter came up for hearing on April 11, 2022, the prosecution had three witnesses. The applicant properly sought, and was granted, an adjournment because he had not been supplied with the witness statements or other evidence in advance.
4. In the meantime, the applicant lodged a Notice of Motion in the lower court dated April 25, 2022 seeking eleven reliefs including an order that the CCTV footage sought to be relied upon was inadmissible having been obtained illegally; and, that the medical report relating to one of



the complainants dated September 20, 2018 was also inadmissible. There were multiple prayers to compel the prosecution to produce certain witnesses or documents which the applicant contends may encompass exculpatory evidence.

5. The last prayer in that motion was for transfer of the trial from Makadara Court to Kiambu Chief Magistrates Court on the ground that the locus in quo, a business styled Ridgeways Inn, The Yard, is situated in Kiambu County.

6. On 27<sup>th</sup> May 2022, the learned trial magistrate considered the application and directed as follows-

I am of the considered view that all the issues raised therein are issues of trial and can be canvassed exhaustively at the trial. The court is not party or alive to the documents that the parties intend to produce during trial. The accused will have a chance to raise all his concerns during trial. In the upshot, I direct that the parties do address the court only on the issue of territorial jurisdiction raised in the aforementioned application.

7. The applicant's case is that the learned trial magistrate ought to have heard the entire motion and not restricted the parties to the question of territorial jurisdiction. In a synopsis, he contends that the order impedes his right to adequate facilities to prepare for his defence and upends his right to a fair trial enshrined in Article 50 of the Constitution.

8. The revision is opposed by both the prosecution and the interested parties. They argue that the trial court properly exercised its discretion in the matter; and, that in all the circumstances of this case, the applicant has failed to demonstrate any illegality or impropriety in the decision.

9. On April 24, 2023, I heard further arguments from the applicant, the respondent and the interested parties.

10. I have studied the original records of the lower court. In view of the orders that I propose to make, I will not delve into the merits of either the case facing the applicant or the substance of the Notice of Motion dated April 25, 2022 before the lower court.

11. But I can safely state the following: As I observed, no witness has taken to the stand. The case is thus at the preliminary stages. Prayers (a) to (j) of the applicant's motion in the lower court dated April 25, 2022 went into the root of admissibility of CCTV footage and a number of other documents held by some medical institutions, the police or the prosecution; and, orders to call certain witnesses for cross-examination. I must concur with the learned trial magistrate that those matters fall squarely within the ambit of the trial and should be taken at the appropriate stages.

12. The only issue that was live at that early stage was whether the trial should be held at Makadara or in Kiambu as proposed by the applicant. I thus find that the direction by the learned trial magistrate for the parties to address the court on that preliminary issue was correct. Again, in view of the orders that I propose to make, the less I say about it the better.

13. For all those reasons, I am satisfied as to the correctness, legality and propriety of the impugned decision by the lower court made on April 27, 2022. It follows as a corollary that the applicant's Notice of Motion dated 10<sup>th</sup> June 2022 is hereby dismissed.

14. Before I leave the matter, the applicant had complained to the trial court that learned counsel watching brief for the complainants was usurping the powers of the prosecutor. I wish to state the following for the guidance of the parties and the trial court: The boundaries of participation by counsel watching brief for the complainants vis-à-vis the powers of the Director of Public Prosecutions have now been



clearly delineated by the Supreme Court in [\*Joseph Lendrix Waswa v Republic, Supreme Court Petition No 23 of 2019\*](#) [2020] eKLR.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5<sup>TH</sup> DAY OF MAY 2023.**

**KANYI KIMONDO**

**JUDGE**

**Ruling read virtually on Microsoft Teams in the presence of: -**

The applicant (in person).

Ms Oduor for the respondent instructed by the office of the Director of Public prosecutions.

Mr Otwal for the interested parties instructed by Otwal & Manwa Associates Advocates.

**Mr E Ombuna, Court Assistant.**

