



REPUBLIC OF KENYA



KENYA LAW
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**Muriithi & another v Republic (Criminal Revision Application
E004 of 2022) [2023] KEHC 23160 (KLR) (5 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23160 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL REVISION APPLICATION E004 OF 2022**

PM MULWA, J

OCTOBER 5, 2023

BETWEEN

DAVID GATIMU MURIITHI 1ST APPLICANT

JOSEPH MUGWERU 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By the Notice of Motion application dated December 21, 2021, the applicants seek the following orders:
 - i. Spent
 - ii. That there be a stay of proceedings in respect of Ruiru Law Court's Criminal Case No 621 of 2020, Republic vs David Gatimu Muriithi and Joseph Mugweru until the hearing and determination of this application.
 - iii. A revision of the ruling read on October 28, 2021 in Ruiru Law Court's Criminal Case No 621 of 2020 directing the case to be heard in the absence of counsel for the Accused.
 - iv. An order recalling of the complainant Ephraim Muriuki Ndege, Pw1 to testify and give his testimony for purposes of being cross-examined by counsel for the Accused persons.
 - v. An order re-allocating Ruiru Law court's Criminal Case No 621 of 2020 for hearing and determination before any other magistrate save for Hon. JA Agonda PM.
 - vi. Any other orders this court may deem fit.
2. The application is premised on the grounds that the matter was slated for mention on October 28, 2021 but proceeded for a hearing in the absence of counsel for the accused persons; the accused counsel



- had not been provided with the committal bundle and despite the issue being raised by the accused the court directed that the matter proceeds for hearing; the proceedings of October 28, 2021 are contrary to the rules of natural justice and deny the accused their cardinal rights to a fair hearing as enshrined under Article 50 of the constitution, and further the hearing of the matter was prejudicial to the applicant.
3. The application is supported by the annexed affidavit of David Gatimu Muriithi sworn on December 21, 2021, reiterating the grounds of the application. He urged the court to exercise its revisionary jurisdiction under Section 362 of the Criminal Procedure Code as read alongside Article 165 of the constitution, and review the trial court's ruling of October 28, 2021 directing the matter to proceed for hearing and order the evidence of Pw1 to be taken afresh.
 4. At the hearing of the application Mr Muriuki, counsel for the state informed the court he was not opposed to the application.
 5. I have perused the court record herein and have noted that when the application came for hearing before my sister Ngetich J. on May 31, 2022, the state counsel Mr Gacharia had informed the court that there was no need to stay the proceedings of the trial court as the only issue arising from the application was re-calling Pw1. Ngetich J. directed that the trial court proceed with the hearing of the remaining witnesses as the issue of recalling Pw1 was being resolved.
 6. Articles 165 (6) and (7) of the Constitution provide 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.”
 7. Further, Section 362 of the Criminal Procedure Code provides that: “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.”
 8. Granting an order for a stay in criminal proceedings is only done after an exercise of extreme judiciousness and caution. it is imperative to note that, the decision whether or not to arrest proceedings in the trial court is a discretionary remedy by the court exercising its inherent jurisdiction.
 9. In *Joram Mwenda Guantai vs The Chief Magistrate*, Nairobi Civil Appeal No 228 of 2003 [2007] 2 EA 170, the Court of Appeal held that: “...the High Court has inherent jurisdiction to grant an order of prohibition to a person charged before a subordinate court and considers himself to be a victim of oppression. If the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious, the Judge has the power to intervene and the High Court has an inherent power and the duty to secure fair treatment for all persons who are brought before the court or to a subordinate court and to prevent an abuse of the process of the court.”
 10. Guided by the above decision this court has the discretion to order stay of proceedings if it is demonstrated that the prosecution is actuated by malice and there is abuse of the court process and/ or where such prosecution is instituted for an improper motive such as to harass and exert improper pressure upon the applicant. The subordinate court criminal proceedings will also be stayed if it is demonstrated that the prosecution is instituted in derogation of the applicant's constitutional rights.



11. In the instant case, it is the applicant's contention that the matter was slated for a mention but the trial court directed that the same proceed for hearing. He avers that he was not represented by counsel and thus his right to a fair hearing and representation by counsel were infringed.
12. This court appreciates the constitutional rights of an accused person at the hearing vis-a-vis the grave judicial action to be taken if a court is to order a stay of proceedings. The accused feels his rights have been infringed and he has come to this court seeking stay of further proceedings in the trial court as well as recall Pw1 to tender his evidence. In *Kenya Wildlife Service vs James Mutembei* [2019] eKLR the court held that: - "Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent. This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases..."
13. This court finds the Applicant has failed to demonstrate the exceptional circumstances that will warrant this court to issue an order to stay the proceedings of the trial court. The only issue is the trial court proceeded on October 28, 2021 which can be cured by recalling Pw1 to the stand and allowing counsel for the Applicant to cross-examine him.
14. In the circumstances, therefore, this court will issue the orders that commend themselves to ensure expeditious disposal of the matter and also ensure that the applicant is accorded a fair hearing.
15. The upshot is that the application partially succeeds in the following terms:
 - i. An order does issue to recall the complainant Ephraim Muriuki Ndege - Pw1 for purposes of being cross-examined by counsel for the Accused persons.
 - ii. The trial court file is to be returned back to Ruiru Law Courts for purposes of compliance with (i) above.

It is so ordered

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU

THIS 5TH DAY OF OCTOBER 2023.

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P.M. MULWA

JUDGE

In the presence of:

Kinyua/ Duale – Court assistant

Mr. Rurige - for the Applicant

Mr. Gacharia for the Respondent/state

