



**GOO v Republic (Miscellaneous Criminal Application E195 of 2024)
[2024] KEHC 15153 (KLR) (2 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15153 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
MISCELLANEOUS CRIMINAL APPLICATION E195 OF 2024**

**DR KAVEDZA, J
DECEMBER 2, 2024**

BETWEEN

GOO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This ruling arises from an application dated 29th November 2024. The applicant seeks orders compelling the trial court to direct the Commissioner of Nairobi Remand to facilitate an HIV test for the accused. Additionally, the applicant requests a stay of all proceedings before the trial court pending the hearing and determination of this application.
2. The application is supported by grounds that the trial court declined the request for an HIV test, which the applicant asserts is critical to the accused's defense. The applicant contends that failure to grant the orders sought will result in a miscarriage of justice.
3. I have carefully considered the application, the supporting affidavit, and the relevant provisions of the law.
4. Article 25 of the *Constitution of Kenya* enshrines certain fundamental rights and freedoms that are absolute and cannot be limited under any circumstances. Among these is the right to freedom from cruel, inhuman, or degrading treatment or punishment. Further, Article 28 guarantees every individual's right to inherent dignity and the right to have that dignity respected and protected.
5. Upon review of the record, there is no affidavit or other evidence demonstrating that the applicant has provided consent to undergo an HIV test. Without such consent, any order compelling the applicant to submit to such a procedure would contravene the constitutional rights enshrined in Articles 25 and 28.



6. Compelling an individual to undergo an HIV test without their consent is not within the powers of this court and would constitute a violation of their constitutional rights. Accordingly, the application must fail on these grounds and is struck out.

Orders accordingly.

RULING DATED AND DELIVERED THIS 2ND DAY OF DECEMBER 2024

D. KAVEDZA

JUDGE

