



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JUDICIAL REVIEW MISC. APPLICATION NO. 24 OF 2018

REPUBLIC.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

AND

LIVINGSTONE WANYOIKE KINYANJUI.....EX PARTE APPLICANT

AND

JOHN MAINA MBURU.....1ST INTERESTED PARTY

JOHN GITHINJI MWANGI.....2ND INTERESTED PARTY

BERNARD GACHIE KAMAU.....3RD INTERESTED PARTY

JUDGMENT

The Parties

1. **Livingstone Wanyoike Kinyanjui**, the applicant is a male adult of sound mind residing and working in the Republic of Kenya.
2. The Respondent is the Director of Public Prosecutions (herein after referred to as the DPP), established under Article 157 of the Constitution with constitutional mandate to *inter alia* institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed.^[1]
3. The first, second and third Interested Parties are male adult Kenyans.

Factual Matrix

4. The applicant states that he is the registered proprietor of all that parcel of land known as Ruiru Kiu/Block 2/(Githunguri) 3758. He also states that the said land is the subject of civil suit number 879 of 2010, at the Chief Magistrates Court at Thika.
5. He states that he commenced the prosecution of the complainants in criminal case number 1355 of 2014 at Milimani, Nairobi, but the DPP withdrew the charges. Further, he states that the DPP charged him in criminal case number 1863 of 2017 at the Chief Magistrates court, Milimani.

Legal foundation of the application

6. The applicant states that he has been prosecuted on purely civil matters and that the said prosecution is an abuse of court process and that it is aimed at settling personal scores.

Reliefs sought

7. The applicant prays for an order of *certiorari* to quash the proceedings in criminal case number 1863 of 2017, *Republic v Livingstone Wanyoike Kinyanjui*, at the Chief Magistrates Court at Milimani. He also prays that the costs of the application to be provided for.

The Respondent's grounds of opposition

8. The DPP filed grounds of opposition on 27th May 2019. He states that he acted within the law and that the National Police Service is mandated to investigate criminal offences and stopping it from executing its mandate would result in greater injustice. The DPP also states that he acted independently within the confines of his powers. The DPP further states that he received a complaint to review charges in criminal case number 1355 of 2014. He states the complaint was that the said charges were framed to influence the outcome of Thika CMCC No. 879 of 2010. The DPP states that in order to facilitate an independent review, he directed that the said charges be withdrawn under section 87(a) of the Criminal Procedure Code^[2] and the investigation file be re-submitted for fresh investigations.

9. The DPP states that upon receipt of the re-submitted investigation file together with recommendation from the Directorate of Criminal Investigations, he independently analysed the evidence for sufficiency of evidence to charge the applicant, and, he charged him with as per the charge sheet in criminal case number 1863 of 2017. He states that the decision to charge was made independently based on sufficiency of evidence and public interest underlying prosecution of criminal offences.

10. The DPP further states that the applicant has not demonstrated that in making the decision to charge him, he abrogated any provision of the Constitution or any written law or acted in breach of the rules of Natural justice or breach of fundamental rights.

First Interested and second Interested Party's Replying Affidavit

11. The first Interested Party, John Maina Mburu, the Chairman of Githunguri Constituency Ranching Company Ltd swore the Replying Affidavit dated 16th April 2019 on behalf of himself and the second Interested Party. He averred that they were charged in Criminal case Number 1355 of 2014, *Republic v John Maina Mburu and John Githinji Mwangi* which was also the subject of civil suit number CMCC No 879 of 2010, *Livingstone Kinyanjui v Bernard Gachie*.

12. He deposed that in the course of the proceedings, they wrote to the DPP and providing details and documents and upon studying the same, the DPP directed the Directorate of Criminal Investigations to re-investigate the case after which he directed that the case be withdrawn

13. He averred that upon investigations, the applicant was arrested and charged with giving false information to the police in that he had misled them into arresting and charging the interested parties in the said case. He deposed that the instant application has no basis in law since the DPP has the constitutional mandate to prosecute criminal cases. He also deposed that the court has no jurisdiction to interfere with the constitutional mandate of the police. Lastly, he deposed that the instant application does not disclose any basis for the court to grant the orders sought.

The third Interested Party's Replying Affidavit

14. Bernard Gachie Kamau swore the Replying Affidavit dated 11th April 2019. He deposed that he is the lawful owner of land parcel number Ruiru/ Kiu/ Block 1 Githunguri/3738 currently registered in the applicant's name. He averred the said registration was procured through fraud and that investigations by the Directorate of Criminal Investigations have established that the documents used to effect the transfer did not emanate from Githunguri Ranching Company Limited.

15. He deposed that he only learnt about the applicant's registration of his title after the applicant filed Thika CMCC no. 879 of 2010. He deposed that upon filing his defence stating that he was the owner of the land, the applicant instigated his arrest and prosecution in criminal case number 1863 of 2017. He further deposed that even though judgment was entered in favour of the applicant in the civil case, it did not extinguish criminal liability.

Applicant's advocates submissions

16. The applicant's counsel relied on *George Joshua Okungu and Another v Chief Magistrates Court, Nairobi*^[3] for the proposition that the mere fact that the intended or ongoing criminal proceedings are in all likelihood bound to fail it is not a ground to halt criminal process unless the criminal process is meant to force the accused to submit to a civil claim. He submitted that judgment in the civil suit was rendered in favour of the applicant and in light of the said judgment, it would be an absurdity for the criminal proceedings to continue.

The Respondent's counsel's advocates submissions

17. Counsel for the Respondent submitted that the DPP independently analysed the investigations and exercised his discretion properly in accordance with Article 157 (10) of the Constitution. He cited *Paul Nganga Nyaga v Attorney General & 3 others*^[4] for the proposition that the High Court can only interfere if there is sufficient evidence that the DPP acted in contravention of the Constitution. He also cited *Francis Anyango Juma v The DPP & another and Kenya Commercial Bank Limited & 2 Others v Commissioner of police and another*^[5] which decisions emphasised the independence of the DPP.

18. Counsel also relied on *George Joshua Okungu and another v Chief Magistrates Court, Anti-Corruption Court at Nairobi and another*^[6] and *Republic v Commissioner of Police and another ex parte Michael Monari and another*^[7] which restated the grounds upon which a criminal prosecution can be quashed. In addition, he cited *William Ruto & another v Attorney General*^[8] which held that the analysis of the evidence should be done at the trial not in the constitutional court. Lastly, counsel cited *Kuria and Others v Attorney General*^[9] which emphasised the need for the court to balance public and private interests and added that section 193A of the Criminal Procedure Code^[10]

permits parallel criminal and civil proceedings.

First and second interested party's advocates' submissions

19. Counsel cited *Joram Mwenda Guantai v The Chief Magistrate*^[11] and *Republic v Attorney General & 4 others ex parte Kenneth Kariuki Githii*^[12] for the holding that the orders sought can only be issued if the prosecution is an abuse of court process. He argued that the applicant has not demonstrated abuse of the prosecutorial powers or mandate of the DPP. In addition, he submitted that the application seeks to interfere with the prosecutorial powers of the DPP conferred by Article 157(6) (10) of the Constitution. He on *John Swaka v The DPP & 2 Others*^[13] which restated the powers of the DPP and *Johnson Kamau Njuguna & another v DPP*^[14] which stated that the police have a duty to investigate any complaint once it is reported. He argued that the DPP did not act irrationally and urged that the powers to quash prosecution must be exercised sparingly.^[15] Lastly, counsel submitted that even though the judgment in Thika CMCC No 879 of 2010 was rendered in favour of the applicant, it does not take away the fact that he gave false information to the police and argued that the law permits parallel criminal and civil proceedings.

Third Interested Party's Advocates submissions

20. The third Interested Party's advocate did not file submissions in these proceedings.

Determination

21. It is common ground that at the centre of the dispute that triggered the criminal cases featuring in these proceedings including the impugned criminal prosecution is ownership of title number Ruiru/Kiu/ Block 2/3758. It is also common ground that the ownership of the said land was the subject of the dispute in Civil Case Number 879 of 2010, *Livingstone Wanyoike Kinyanjui v Gachie Kamau* at the Chief Magistrates Court at Thika.

22. During the pendency of these proceedings judgment was rendered in the above civil case on 10th December 2018 in favour of the applicant. The court in the said judgment held that the applicant herein who was the plaintiff in the said case had demonstrated that he was the rightful owner of the said title. It is important to mention that the defendant in the said case, Bernard Gachie Kamau is the third Interested Party in these proceedings. The court went further to hold that the defendant had failed to plead and prove that the title was obtained fraudulently.

23. The applicant herein is charged with the offence of giving false information contrary to section 129 (a) of the Penal Code.^[16] The particulars of the offence are that:-

“On diverse dates between 26th October 2010 and 16th November 2010 at Director of Criminal Investigation Headquarters Mazingira House, Kiambu Road within Nairobi County, jointly with another not before court informed No. 235014, Chief Inspector Patrick Maloba, a person employed in the public service as a police officer attached to Directorate of Criminal Investigation, Land Fraud Investigation Unit, that you were the owner of land parcel Ruiru/Kiu/ Block 2/ 3758 measuring 0.50 hectares situated at Ruiru which information you knew or believed to be false intending thereby to cause or knowing it to be likely that it would thereby cause the said...Chief Inspector Patrick Maloba to arrest and charge John Maina Mburu and John Githinji Mwangi with the offence of conspiracy to defraud contrary to section 317 of the Penal Code which he ought not to have done if the true state of the fact in respect of which such information was given had been known to him.”

24. The substance of the above charge as I understand it is that the applicant provided false information that he owned the above land. A court of competent jurisdiction has since rendered a judgment affirming that the applicant owns the land. There is nothing before me to show that the said judgment had been reviewed, varied or set aside.

25. Section 44 of the Evidence Act^[17] provides that:-

(1) A final judgment, order or decree of a competent court which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is admissible when the existence of any such legal character, or the title of any such person to any such thing, is admissible.

(2) Such judgment, order or decree is conclusive proof—

(a) that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

(b) that any legal character to which it declares any such person to be entitled accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;

(c) that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease;

(d) that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

26. The existence of a judgment rendered by a court of competent jurisdiction raises a pertinent question, which is whether the impugned

prosecution has a legal or factual foundation. Our jurisprudence is awash with decisions stating the grounds upon which a criminal prosecution can be terminated.

27. The decision to institute or not institute criminal proceedings is a high calling imposed upon the DPP by the law. The prosecutor is required to act with diligence and promptness to investigate, litigate, and dispose of criminal charges, consistent with the interests of justice and with due regard for fairness, accuracy, and rights of the accused, victims, and witnesses. Article 157 of the Constitution leaves no doubt that the DPP is required to not only act independently, but to remain fiercely so. Article 245 (4) (a) of the Constitution provides that "*no person may give a direction to the Inspector General with respect to the investigation of any offence or offences.*" This provision is aimed at ensuring that investigations are undertaken independently.

28. The core issue here is for this court to determine the circumstances under which the High Court in exercise of its vast jurisdiction can halt, stop, prohibit or quash a criminal prosecution. The Constitution vests the DPP with the sole Authority, power and responsibility to exercise control over the prosecution of all criminal matters except the institution of cases at the Court Martial.^[18] A fair and effective prosecution is essential to a properly functioning criminal justice system and to the maintenance of law and order. Individuals involved in a crime – the victim, the accused, and the witnesses – as well as society as a whole have an interest in the decision whether to prosecute and for what offence, and in the outcome of the prosecution. In short the proper and effective administration of the criminal justice system is a matter of great public interest.

29. There are general principles which should underlie the approach to prosecution. The DPP must at all times uphold the rule of law, the integrity of the criminal justice system and the right to a fair trial and respect the fundamental rights of all human beings to be held equal before the law, and abstain from any wrongful discrimination.

30. Fundamentally, the primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to seek conviction. The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion not to pursue criminal charges in appropriate circumstances. The DPP is required to protect the innocent and to seek conviction of the guilty, and also to consider the interests of victims and witnesses. The DPP has an obligation to respect the constitutional and legal rights of all persons, including suspects and accused persons and should avoid any appearance of impropriety in performing the prosecution function.

31. Also, one key consideration to guide the DPP in instituting court proceedings is to advance or protect public interest as opposed to private interest. The decision to prosecute or not to prosecute is of great importance. It can have the most far-reaching consequences for an individual. Even where an accused person is acquitted, the consequences resulting from a prosecution can include loss of reputation, disruption of personal relations, loss of employment and financial expense, in addition to the anxiety and trauma caused by being charged with a criminal offence.

32. A wrong decision to prosecute or, conversely, a wrong decision not to prosecute, both tend to undermine the confidence of the community in the criminal justice system. For victims and their families, a decision not to prosecute can be distressing. The victim, having made what is often a very difficult and occasionally traumatic decision to report a crime, may feel rejected and disbelieved. It is therefore essential that the prosecution decision receives careful consideration.

33. Courts have an overriding duty to promote justice and prevent injustice. From this duty there arises an inherent power to '*stay*' an indictment (or stop a prosecution) if the court is of the opinion that to allow the prosecution to continue would amount to an abuse of the process of the court or infringement of a citizens' fundamental rights. Abuse of process has been defined as something so unfair and wrong with the prosecution that the court should not allow a prosecutor to proceed with what is, in all other respects, a perfectly supportable case.^[19] Whether a prosecution is an abuse of court process, unfair, wrong or a breach of fundamental rights, it is for the court to determine on the individual facts of each case.

34. Before the court is a charge sheet whose substratum has been seriously dented by a court judgment. So long as the judgment stands, unless and until it is overturned on appeal, reviewed or set aside, the information upon which the charge is premised has been declared by the court not to be false. The information may have appeared to be false at the time the charges were preferred. But the court has since ruled otherwise. This court is not sitting as an appellate court against the said decision. Only an appeal or review can vary or upset the said judgment. The argument that the said judgment does not take away the criminal culpability is legally frail and flies on the face of section 43 of the Evidence Act.^[20]

35. A wrong decision to prosecute or, conversely, a wrong decision not to prosecute, both tend to undermine the confidence of the community in the criminal justice system. It is therefore essential that the prosecution decision receives careful consideration in a case seeking to prohibit the trial. Where circumstances change during the pendency of a criminal trial to the extent of rendering the trial unsustainable or a mockery of justice, the DPP has a legal duty to rise to the occasion and terminate the proceedings. Where new and credible evidence is discovered which renders the ongoing criminal trial unsustainable, the prosecution should as a matter of prudence, duty and calling terminate the proceedings instead of holding on to a lame prosecution. Continuation of such a prosecution amounts to an abuse of court process, it is unfair, it is wrong and a breach of fundamental rights. The concept of a fair trial involves fairness to the prosecution and to the public as well as to the accused.^[21]

36. The inherent jurisdiction of the court to stop a prosecution to prevent an abuse of process is to be exercised only in exceptional circumstances.^[22] The essential focus of the doctrine is on preventing unfairness at trial through which the accused is prejudiced in the presentation of his or her case or where there is clear breach of fundamental rights to a fair trial. Courts should first consider whether or not there is anything in the trial to prevent 'a fair trial' and if there is, then the court ought to stop the prosecution. The high court will only prohibit or quash prosecutions in cases where it would be impossible to give the accused a fair trial; **or where it would amount to a misuse/manipulation of process because it offends the court's sense of justice and propriety to be asked to try the accused in the circumstances of the particular case.**^[23]

37. It is in public interest that prosecutions be mounted to uphold law and order and justice for the victims of crime. A criminal prosecution can be stopped if it was commenced in the absence of proper factual foundation or where circumstances change as in this case destroying the foundation upon which it was premised. The enquiry is whether there has been an irregularity or an illegality that is a departure from the formalities, rules and principles of procedure according to which our law requires a criminal trial to be initiated or conducted. [24]

38. Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to a fair trial be jeopardized. [25]

39. A criminal trial premised on unfair and questionable partisan investigations or a decision to charge arrived at unfairly and without any reasonable basis would in my view open the door to an unfair trial. The provisions of the Constitution conferring powers upon the High Court to grant such remedies as certiorari, prohibition, mandamus or permanent stay of proceedings are a device to advance justice and not to frustrate it. In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the Court or that the ends of justice require that the proceedings ought to be quashed.

40. The saving High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceedings in the interest of justice.

41. The High Court's inherent powers to quash, stay or prohibit criminal proceedings are wide as they imply the exoneration of the accused even before the proceedings have been culminated by way of trial. Noting the amplitude of these powers and the consequences which they carry, the Supreme Court of India [26] revisited the law on the issue and held that *'these powers should be exercised sparingly and should not carry an effect of frustrating the judicial process.'*

42. The Supreme Court of India in the above case delineated the law in the following terms:- *"The power of quashing criminal proceedings has to be exercised very sparingly and with circumspection and in the rarest of rare cases and the Court cannot be justified in embarking upon an inquiry as to the reliability or otherwise of allegations made in the complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion. The extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice. However, the Court, under its inherent powers, can neither intervene at uncalled for stage nor can it 'soft-pedal the course of justice' at a crucial stage of proceedings...The power of judicial review is discretionary, however, it must be exercised to prevent the miscarriage of justice and for correcting some grave errors and to ensure that esteem of administration of justice remains clean and pure. However, there are no limits of the power of the court, but the more the power, the more due care and caution is to be exercised in invoking these powers."* [27]

43. The leading case on the application of abuse of process remains *Bennet vs Horseferry Magistrates Court & another*. [28] The court confirmed that an abuse of process justifying the stay of a prosecution could arise in the following circumstances:-

- i. *Where it would be impossible to give the accused a fair trial; or;*
- ii. *Where it would amount to a misuse/manipulation of process because it offends the court's sense of justice and propriety to be asked to try the accused in the circumstances of the particular case.*

44. The above categories are not mutually exclusive and the facts of a particular case may give rise to an application to stay involving more than one alleged form of abuse, and that staying a proceeding is a discretionary remedy and each case will depend on its set of facts and circumstances. **Chris Corns** [29] argues that the grounds upon which a stay will be granted have been variously expressed in the cases. These grounds can be classified under three categories:-

- i. *When the continuation of the proceedings would constitute an 'abuse of process,'*
- ii. *When any resultant trial would be 'unfair' to the accused, and*
- iii. *When the continuation of the proceedings would tend to undermine the integrity of the criminal justice system.*

45. Criminal proceedings commenced to advance other gains other than promotion of public good are vexatious and ought not to be allowed to stand. The word "vexatious" means "harassment by the process of law," "lacking justification" or with "intention to harass." It signifies an action not having sufficient grounds, and which therefore, only seeks to annoy the adversary. The hallmark of a vexatious proceeding is that it has no basis in law (or at least no discernible basis); and that whatever the intention of the proceeding may be, its only effect is to subject the other party to inconvenience, harassment and expense, which is so great, that it is disproportionate to any gain likely to accrue to the claimant; and that it involves an abuse of process of the court.

46. Certiorari is a discretionary remedy, which a court may refuse to grant even when the requisite grounds for it exist. The court has to weigh one thing against another to see whether or not the remedy is the most efficacious in the circumstances obtaining. The discretion of the court being a judicial one must be exercised on the basis of evidence and sound legal principles. As stated earlier, the power to quash proceedings is immense since it amounts to exonerating a suspect before trial. Such power must be exercised with extreme care and caution. It is a power which the court exercises only in exceptional cases where there is clear evidence of abuse of powers, abuse of discretion or absence of factual basis to mount the prosecution.

47. It is my view that the applicant has presented sufficient material to demonstrate that there is no basis to justify the continuation of the prosecution and to persuade the court to exercise its discretion in his favour. A prosecution should be instituted or continued if there is admissible, substantial and reliable evidence that a criminal offence known to the law has been committed by the accused. On the face of a valid court judgment in favor of the applicant, it beats logic how the prosecution intends to sustain a charge of giving false information.

48. In view of my above reasoning, the conclusion becomes irresistible that the applicant's Notice of Motion dated **6th** March 2018 is merited.

49. Accordingly, I allow the applicant's Notice of Motion dated **6th** March 2018 and issue, as I hereby do, an order of *certiorari* quashing Nairobi **Chief Magistrates Criminal Case number 1863 of 2017**, *Republic vs Livingstone Maina Kinyanjui*.

50. In addition, I also issue an order of prohibition, prohibiting the Director of Public Prosecutions or any other person acting on his behalf from further prosecuting the applicant *Livingstone Maina Kinyanjui* or proceeding with **Nairobi Chief Magistrates Criminal Case number 1863 of 2017**, *Republic vs Livingstone Maina Kinyanjui* or charging the said *Livingstone Maina Kinyanjui* in any court in the Republic of Kenya with any offence premised on the same facts as in the impugned criminal case.

51. I make no orders as to costs.

Orders accordingly

Signed, Dated and Delivered at Nairobi this 17th day of January, 2020.

John M. Mativo

Judge

[1] Article 157 (6) of the Constitution.

[2] Cap 75, Laws of Kenya.

[3] {2014} e KLR.

[4] {2013} e KLR.

[5] {2013} e KLR.

[6] {2014} e KLR.

[7] {2012} e KLR.

[8] HCCC No. 1192 of 2004.

[9] {2002} 2 KLR 69.

[10] Cap 75, Laws of Kenya.

[11] {2007} 2 EA 170.

[12]{2014} e KLR.

[13]{2013} e KLR.

[14]{2018} e KLR.

[15] Citing *State of Maharashtra & Others v Arun Gulab & Others*, Criminal Appeal No. 590 of 2007.

[16] Cap 63, Laws of Kenya.

[17] Cap 80, Laws of Kenya.

[18] Article 157 of the constitution.

[19] *Hui Chi-Ming vs R* {1992} 1 A.C. 34, PC.

[20] Cap 80 Laws of Kenya.

[21] *DPP vs Meakin* {2006} EWHC 1067.

[22] See Attorney General's Reference (No 1 of 1990) [1992] Q.B. 630, CA; Attorney General's Reference (No 2 of 2001) [2004] 2 A.C. 72, HL.

[23] See *Bennett v Horseferry Road Magistrates' Court and Another* [1993] 3 All E.R. 138, 151, HL; see also *R v Methyr Tydfil Magistrates' Court and Day ex parte DPP* [1989] Crim. L. R. 148.

[24] Interpreting similar provisions in the constitution of South Africa, the South African Constitutional court (Nicholas AJA), *Shabalala & 5 others vs A.G of Transvaal & Another* CCT/23/94.

[25] *Natasha Singh vs. CBI* {2013} 5 SCC 741.

[26] See *Maharashtra vs Arun Gulab Gawali*.

[27] See *State of West Bengal & Others vs Swapan Kumar Guha & Others*, AIR, 1982, SC 949, *Pepsi Foods Ltd & Another vs Special Judicial Magistrate & Others* AIR 1998, SC 128 & *G. Ugar Suri & Ano vs State of U.P & Others*, AIR 2000 Sc 754.

[28] {1993} All E.R 138, 151, House of Lords.

[29] Chris Corns, *Judicial Termination of Defective Criminal Prosecutions: Stay Applications*, 76 *University of Tasmania Law Review*, Vol 16 No. 1, 1977.