



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISC. CRIMINAL REVISION NO. 204 OF 2018

WENDY WAMBUI NGARUIYAAPPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. In *Mark Lloyd Steveson v R (Kiambu Criminal Revision No. 1 of 2016)*, I delineated the principles under which the High Court will seize supervisory jurisdiction over a matter that is undergoing trial at the Magistrate's Court. I expressed myself thus:

[T]he High Court will usually exercise its power to review or even exercise an appeal over an interlocutory matter before a magistrate's court only in exceptional circumstances. While difficult to determine with mathematical precision when the court will use this power, it is only be sparingly used where, in the words of South African authors, Gardiner and Lansdown (6th Ed. Vol. 1 p. 750), "grave injustice might otherwise result or where justice might not by other means be attained." As the authors correctly write, the Court will generally "hesitate to intervene, especially having regard to the effect of such a procedure upon the continuity of proceedings in the court below." Hence, the propriety of exercising revision power for interlocutory matters is decided on the facts of each case and with "due regard to the salutary general rule that appeals are not entertained piecemeal." (Walhaus & Others v Additional Magistrate, Johannesburg & Another, 1959 (3) SA 113(A) at 120D; S. v Western Areas Ltd & Others 2005 (5) SA 214 (SCA) at 224D.

2. My views remain the same. The High Court should only exercise supervisory jurisdiction over an on-going criminal case as a matter of last resort to prevent grave injustice or where justice might not by other means be attained.

3. In the present case, the Applicant is wife of the 1st Respondent. The 1st Respondent is charged with a rape which allegedly happened at their former matrimonial home in Nakuru. It is not clear from the record the relationship between the victim of that rape and the couple. In any event, the couple have a child together who is two years old. It is alleged that the child witnessed the rape.

4. It appears from the Lower Court record that the proceedings are fairly contentious. In any event, the Learned Trial Magistrate, in the course of the proceedings and at the instance of at least one of the parties gave two directions which have given rise to the present application:

a. That the complainant in the rape case be protected with certain no contact orders against the Respondent while she lived in the matrimonial home; and

b. That the Respondent be permitted to collect his personal belongings from the matrimonial home under Police escort pending the securing of an alternative safe house for the complainant.

5. The Applicant now says that the Respondent disobeyed both orders. First, the Applicant complains that the Respondent interfered with the Complainant qua complainant by contacting her and giving her money as fare to come to Court. Secondly, the Applicant says that rather than obey the Court orders regarding his temporary removal from the matrimonial home, the Respondent, instead went and lived there for a while. Then, the Respondent went into the matrimonial home and carried out all the furniture and other household goods hence rendering the Applicant functionally destitute.

6. These complaints were raised before the Trial Magistrate. On the issue of interference with witnesses, she was concerned that the Complainant is an adult who had not raised the issue at all. Neither had the Investigating Officer. She was of the view that the Applicant, while a victim of the crime as defined in the Victims Protection Act, cannot extend her rights to purport to protect an adult Complainant who has not raised the same issues.

7. The Learned Trial Magistrate was also not persuaded, on the facts of the case, that the Respondent had committed an act in contempt of court that warranted the Court to act at that moment.

8. I have now looked at the Application and the grievances the Applicant has raised in this Court. I am afraid they do not rise to the level which will compel this Court to take supervisory jurisdiction. First, both issues raised are highly contentious and fact-intensive. They belong to an appeal not a revision of this nature. Second, what the Applicant really seeks is a mandatory injunction compelling the Respondent to return all the household goods he took away from the matrimonial home.

9. I am afraid the nature of the claim the Applicant is making in this case is really civil in nature. It would perilously overload the criminal trial if applications of this nature are entertained in the course of the trial. In any event, the reason for the removal of the goods is highly contested. It is not the stuff of criminal revision.

10. It is for this reasons that I find it imprudent to seize the supervisory jurisdiction of the High Court to deal with this on-going matter. Instead, I direct that the matter be placed before the Learned Trial Magistrate with instructions that it be heard and concluded on a priority basis.

11. Orders accordingly.

Dated and delivered at Nakuru this 15th day of January, 2019

JOEL NGUGI

JUDGE