



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI  
JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW APPLICATION NO. 131 OF 2015

REPUBLIC.....APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS.....1<sup>ST</sup> RESPONDENT

INSPECTOR GENERAL OF POLICE.....2<sup>ND</sup> RESPONDENT

CHIEF MAGISTRATE'S COURT AT NAIROBI.....3<sup>RD</sup> RESPONDENT

AND

ROSALIA WAIRIMU KAGIMBI.....INTERESTED PARTY

AND

FIDELIS WANJIRU KIMANI.....EX PARTE APPLICANT

**JUDGMENT**

**The applicant's case**

1. The applicant seeks the following orders:-

- a. An order of Prohibition directed to the Respondent, the Director of Public Prosecutions, the Inspector General of Police and the Chief Magistrates' Court at Nairobi prohibiting them from arresting, charging and or prosecuting the applicant.
- b. An order of certiorari to remove for the purposes of quashing Nairobi Chief Magistrates Court, criminal Case Number 1695 of 2014, Republic v Fidelis Wanjiru Kimani directed to the Respondents the Director of Public Prosecutions, the Inspector General of Police and the Chief Magistrates Court at Nairobi.
- c. That this honourable court do grant any such other or further relief as it may deem appropriate to grant.
- d. That the costs of this application be provided for.

2. The application is supported by the following grounds:-

- a. **That** the applicant was charged with the offence of forgery contrary to section 345 as read with section 349 of the Penal Code. **[1]** The particulars of the offence are that the applicant with intent to defraud the family of the late George Mbote Kagimbi, forged a Unikwise Agencies Company Ltd Share Certificate Number 001 dated 16<sup>th</sup> June 2014 for parcel of Land Number 118/526 measuring 1 acre by purporting it to be a genuine Share Certificate signed by the late George Mbote Kagimbi, a director of Unikwise Agencies Company Limited.
- b. **That** the said George Mbote Kagimbi (herein after referred to as the deceased) is the applicant's late husband who died on 29<sup>th</sup>

June 2014. That both the applicant and the complainant in the criminal case are co-wives of the deceased.

c. That the applicant and the deceased are co-directors in the said company, and, that, the said charges amount to accusing her of defrauding herself, hence, the charges are blatant abuse of the court process. That the first Respondent acted in bad faith and the case is pushed to settle personal vendetta by the Interested Party, hence, the prosecution is actuated by malice, illegality, misrepresentation and abuse of court process.

d. That the issues raised in the said case can be canvassed in succession cause number 2491 of 2014 and unless the Respondents are restrained by this court, they will continue to intimidate and harass her.

### **First Respondent's grounds of opposition**

3. The DPP filed grounds of opposition on 18<sup>th</sup> April 2016 stating:-

a. That the prayers sought are unconstitutional as they seek to prevent the Director of Public Prosecutions from exercising its mandate as provided under Article 157 of the Constitution, and, that, the prayers sought if granted would cause great injustice to the criminal justice system.

b. That under Article 157(10) of the Constitution and section 6 of the Office of the Director of Public Prosecutions Act, the DPP does not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of the powers or functions, is not under the direction or control of any person or authority.

c. That section 24 of the National Police Service Act mandates the police to investigate any complaint brought to their attention in order to determine whether a criminal offence has been committed. Further, the applicant has not demonstrated that the criminal proceedings are mounted for an ulterior purpose nor has she demonstrated substantial injustice. Lastly, it is in public interest that complaints made to the police be investigated and perpetrators of crime be prosecuted.

### **First Respondent's Replying Affidavit**

4. **Kennedy Lubembe**, a police officer attached to the Directorate of the Criminal Investigations, one of the investigating officers swore the Replying Affidavit dated 20<sup>th</sup> April 2016. He averred *inter alia* that a complaint was made at the police station on 15<sup>th</sup> September 2014 by the interested party to the effect that the applicant had forged her late husband's signature in respect of share certificate number 001 belonging to Unikwisi Agencies and sold it to a one Irene Wangui Ngugi with the intention of disposing her late husband's parcel of land LR No. 118/526 situated within Mavoko area.

5. He deposed that he obtained an independent signature from Family Bank where the deceased held an account and subjected the same to forensic analysis and the opinion of the handwriting expert was that signature in question was not by one person. As a result, criminal charges were preferred against the applicant, hence, this application has been filed in bad faith.

6. He averred that the applicant has not demonstrated that in making the decision to prosecute, the DPP or the Police acted in illegally. He deposed that the DPP independently reviewed and analysed the evidence including witness statements as the law requires. He stated that the decision to prosecute was informed by the sufficiency of the evidence and public interest.

7. Mr. Lubembe deposed that the accuracy of the evidence can only be assessed by the trial court, and, that the allegations of abuse of power are made in bad faith.

### **Interested Party's Replying Affidavit**

8. Rosalia Wairimu Kagimbi, the Interested Party swore the Replying Affidavit dated 25<sup>th</sup> April 2016. She averred that she only learnt of this case from Mr. Lubembe, the Police Officer who was investigating the criminal case. She stated that prior to the said date, the applicant's lawyer kept on informing the trial Magistrate in the lower court of the existence of judicial review application without disclosing the case number. She deposed that she was never served with the pleadings in this case but she obtained copies from the court.

9. She further averred that the applicant was charged with the offence of forgery, and that, this application does not challenge the legality of the charges. She averred that she is the only legal wife of the deceased and that at the time of her late husband's death, she was in the United States of America.

10. She averred that after her husband's death, she commenced the process of collecting her husband's estate and upon visiting the offices of Drumval Famers Co-operative Society, she learnt that on 16<sup>th</sup> July 2014, her husband had allegedly transferred a parcel of land to a one Irene Wangui Ngugi on the strength of a Certificate of Ownership issued by Unikwise Agencies Company Limited. She stated that she notified the official that the signature did not belong to the deceased, after which the transfer was stopped and she reported the matter to the police.

11. She averred that after failing to obtain stay in this case, the applicant made wild allegations against the prosecution counsel and the trial court prompting the trial court to recuse itself from the case.

### **The applicant's further affidavit**

12. The applicant swore a further affidavit dated 7<sup>th</sup> July 2016 in reply to the Interested Party' and the first Respondent's Replying Affidavit.

She reiterated the contents of her earlier affidavit and essentially denied the contents of the Interested Party's Replying Affidavit and the first Respondents Replying Affidavit. She also annexed a letter from the chief stating that the deceased had paid bride price to her family.

### **Applicant's Advocates submissions**

13. The applicant's counsel cited *Republic v Chief Magistrates Court, Mombasa, ex parte Ganijee & Another*<sup>[2]</sup> for the proposition that it is not the purpose of a criminal investigations or a criminal charge to help individuals in the advancement of frustrations of their civil cases because that would be an abuse of court process.

14. In addition, the applicant's counsel urged the court to evaluate whether in making the decision to charge the appellant, the DPP took into account relevant matters or was motivated by irrelevant matters. Counsel submitted that the decision to charge the applicant was hurriedly made and did not take into account the sufficiency of the evidence. Counsel further submitted that the decision to prosecute the applicant did not take into account the sufficiency of the evidence on record. Counsel relied on *Williams's v Spantz*<sup>[3]</sup> for the holding that where the evidence is incapable of sustaining a committal, or lacks proper foundation, it will obviously be oppressive and vexatious. In addition, counsel relied on *Republic v Attorney General ex parte Kipngeno Arap Ngeny*<sup>[4]</sup> for the proposition that criminal prosecution which is commenced in the absence of proper factual foundation or basis is always suspect for ulterior motive or improper purpose. Also, counsel cited *Joshua Okungu & Another v CMS Court, Anti-Corruption Court & Another*<sup>[5]</sup> where the court described selective prosecution as an abuse of court process.

15. Lastly, the applicant's counsel submitted that the DPP did not act independently.<sup>[6]</sup> Counsel placed reliance on *Kuria & 3 Others v Attorney General* for the holding that this court has powers to grant the orders sought and urged the court to condemn the interested party to pay the costs of this case.

### **The first Respondent's Advocates submissions**

16. Counsel for the DPP submitted that the appellant has not demonstrated that the DPP has not acted independently or has abused his powers nor is there evidence of malice or abuse of powers. Counsel cited *Beatrice Ngonyo Kamau v Commissioner of Police and the DPP & Another*<sup>[7]</sup> for the proposition that reasonable grounds cannot amount to the DPP being asked to prove the charge against an accused person at the commencement of the trial but merely to show a *prima facie* case before mounting a prosecution. Further counsel cited *Thuita Mwangi & Another v Ethics and Anti-Corruption Commission & Another*<sup>[8]</sup> for the holding that the court can only interfere where it is proved that the DPP has abused his office.

17. Counsel added that the High Court has no jurisdiction to decide whether or not the applicant has a *prima facie* case or whether there is sufficient evidence against an accused person. Counsel also submitted that the DPP independently reviewed the evidence as the law requires and that the accuracy of the evidence can only be determined by the trial court.

18. Lastly, the Respondent's counsel submitted that the applicant is not entitled to the reliefs sought and placed reliance on *Kenya National Examinations Counsel v Republic*<sup>[9]</sup> He stated that section 193A of the Criminal Procedure Code<sup>[10]</sup> provides that the existence of civil proceedings is not a bar to criminal prosecution.

### **The Interested Party**

19. Counsel for the Interested Party did not file any submissions.

### **Determination**

20. Upon analysing the facts presented by the parties herein and the submissions filed, I find that only one issue falls for determination, that is *whether applicant has demonstrated any grounds to qualify for the orders sought*.

21. The Constitution establishes an independent office of the **DPP** provided under Article 157 (10) of the Constitution. The Article declares that the **DPP** shall not require the consent of any person or authority to commence criminal proceedings and that in the exercise of his powers or functions, the **DPP** shall not be under the direction or control of any person or authority. This position is replicated in Section 6 of the Office of the Director of Public Prosecutions Act<sup>[11]</sup> which provides that pursuant to Article 157 (10) of the Constitution, the Director of Public Prosecutions shall- (a) not require the consent of any person or authority for the commencement of criminal proceedings; (b) not be under the direction or control of any person or authority in the exercise of his powers or functions under constitution, this Act or any other written law; and (c) be subject only to the Constitution and the law.

22. The **DPP** is not only required to act independently in the exercise of his functions, but also ought not to be perceived to be acting under the direction or instructions or instigation of any other person. The decision to institute criminal proceedings is a high calling imposed upon the **DPP** by the law. It must be exercised in a manner that leaves no doubt that the decision was made by the **DPP** independently. 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.

23. A reading of Article 157 of the Constitution leaves no doubt that the **DPP** is required to not only act independently, but to remain fiercely so. It is also important to mention that 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." Just like the constitutionally guaranteed independence of the **DPP**, this provision is aimed at ensuring that investigations are undertaken independently.

24. 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. [12] 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. Thus, the proper and effective administration of the criminal justice system is a matter of great public interest.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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. 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.

30. It is a fundamental principle of law that it is not for this court to determine the veracity or to weigh the strength of the evidence or accused persons defence. That is a function for the trial court hearing the criminal trial. This court can only intervene if there are cogent allegations of violation of the Constitution or the law or violation of Constitutional Rights or threat to violation of the rights or in clear circumstances where it is evident that an accused will not be afforded a fair trial or the right to a Fair Trial has been infringed or threatened or where the prosecution is commenced without a factual basis.

31. 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. The concept of a fair trial involves fairness to the prosecution and to the public as well as to the accused. [13]

32. The inherent jurisdiction of the court to stop a prosecution to prevent an abuse of process is to be exercised only in exceptional circumstances. [14] The essential focus of the doctrine is on preventing unfairness at the 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.

33. 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. [15] It is in public interest that prosecutions be mounted to uphold law and order and justice for the victims of crime.

34. A criminal prosecution can be stopped if it was commenced in the absence of proper factual foundation. 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. [16]

35. 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. [17] 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.

36. The provisions of the Constitution conferring powers upon the High Court to grant such remedies as *Certiorari*, *Prohibition*, *Mandamus* or permanent stay of criminal 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.

37. 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.

38. 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<sup>[18]</sup> 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.'

39. 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."*<sup>[19]</sup>

40. The leading case on the application of abuse of process remains *Bennet vs Horseferry Magistrates Court & another*.<sup>[20]</sup> 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.

41. 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**<sup>[21]</sup> 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.

42. 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.

43. 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.

44. The initial consideration in the exercise of the discretion to prosecute is whether the evidence is sufficient to justify the institution or continuation of a prosecution. This is a decision constitutionally vested on the **DPP**. Where discretion is conferred on the decision-maker the courts also have to determine the scope of that discretion and therefore need to construe the statute purposefully.<sup>[22]</sup> One can confidently assume that Parliament intends its legislation to be interpreted in a meaningful and purposive way giving effect to the basic objectives of the legislation.

45. The **DPP** is mandated to independently evaluate the evidence and make the decision to prosecute independently. When evaluating the evidence regard should be had to the following matters:-

- i. Are there grounds for believing the evidence may be excluded bearing in mind the principles of admissibility at common law and under statute?
- ii. If the case depends in part on admissions by the accused, are there any grounds for believing that they are of doubtful reliability having regard to the age, intelligence and apparent understanding of the accused?
- iii. Does it appear that a witness is exaggerating, or that his or her memory is faulty, or that the witness is either hostile or friendly to the accused, or may be otherwise unreliable?
- iv. Does a witness have a motive for telling less than the whole truth?
- v. Whether the prosecution would be perceived as counter-productive, for example, by bringing the law into disrepute.

vi. Whether the alleged offence is of considerable public concern and

vii. The necessity to maintain public confidence.

46. As a matter of practical reality the proper decision in most cases will be to proceed with a prosecution if there is sufficient evidence available to justify a prosecution.

47. I have carefully analyzed the material presented before me. There is nothing to suggest that the **DPP** acted carelessly, maliciously or abused his powers. It has not been demonstrated that the decision to prosecute was influenced by irrelevant or extraneous considerations. Further, it has not been established that the **DPP** did not act independently in arriving at the decision to prosecute.

48. The applicant has not demonstrated that there was no factual basis to justify a prosecution. As stated earlier, it is not the function of this court to weigh the veracity of the evidence. In my view, 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. It has not been established that the facts presented in this case do not disclose an offence known to the law.

49. The Constitutional provision in Article 157 (10) of the Constitution 2010 ensures that the **DPP** has complete independence in his decision making processes, which is vital to protect the integrity of the criminal justice system because it guarantees that any decision to prosecute a person is made free of any external influences. This court respects this Constitutional imperative and will hesitate to interfere with the functions of the **DPP** unless there is clear evidence of breach of the Constitution or abuse of discretion to prosecute.

50. No evidence has been tendered to show that the **DPP** abused his discretion or powers under the Constitution. The court is inclined to respect the decision by the **DPP** to prosecute for two reasons, (a) it is a constitutional imperative that the Constitutional independence of the **DPP** must be respected, (b) for the Court to intervene, there must be clear evidence of breach of the Constitutional duty to act on the part of the **DPP** or abuse of discretion.

51. Applying the legal tests discussed herein above to the facts of this case, I find and hold that there is nothing to show that the prosecution is unfair or an abuse of court process or abuse of police powers or judicial process. There is no material before me to demonstrate that the prosecution was undertaken without a proper factual foundation.<sup>[23]</sup> It has not been demonstrated that the prosecution was conducted or is being undertaken without due regard to traditional considerations of candour, fairness, and justice, nor has it been shown that the trial is being conducted in a manner different from what is prescribed under the law, or that the trial is bad in law.<sup>[24]</sup>

52. The allegations raised by the applicant are in my view, matters to be dealt with by the trial court hearing the criminal trial. Further, the applicant has not demonstrated that her rights to a fair trial have been or will be infringed if the prosecution proceeds nor has she demonstrated that the prosecution will inherently violate her rights to a fair trial as enshrined in the Constitution. Further, it has not been demonstrated that the prosecution was not commenced in public interest.

53. *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.

54. The applicant also seek an order of *Prohibition*. The writ of *Prohibition* arrests the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person. A prohibiting order is similar to a quashing order in that it prevents a tribunal or authority from acting beyond the scope of its powers. The key difference is that a prohibiting order acts prospectively by telling an authority not to do something in contemplation. However, as stated above, the illegality of the impugned prosecution has not been established nor has it been established that the Respondents acted illegally or in excess of their powers nor has the decision to prosecute been shown to be illegal, irrational or a nullity

55. In view of my above reasoning, the conclusion becomes irresistible that the applicants Notice of Motion dated 27<sup>th</sup> April 2015 does not satisfy the threshold to warrant the orders sought.

56. Accordingly, I hereby dismiss the applicants Notice of Motion dated 27<sup>th</sup> April 2015 with no orders as to costs and direct that **Nairobi Chief Magistrates Criminal Case number 1695 of 2014, Republic v Fidelis Wanjiru Kimani** proceeds to hearing and determination. I also direct that a copy of this judgment be forwarded to the DPP.

57. I note with great concern that this case has been pending in court since April 2015. To me, the said period is unreasonably long and unacceptable and goes against the constitutional dictate that court cases be determined expeditiously.

Orders accordingly

Signed, Dated and Delivered at Nairobi this 20<sup>th</sup> day of November, 2019

**John M. Mativo**

**Judge**

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- [1] Cap 63, Laws of Kenya.
- [2] {2002} 2 KLR.
- [3] {1992} 66 NSWLR 585.
- [4] HC Civil Application No. 406 of 2001.
- [5] {2014} e KLR.
- [6] Citing *Githunguri v Republic* {1986} KLR 1.
- [7] HC Petition No. 21 of 2012.
- [8] HC Petition No. 153 of 2013.
- [9] Civil Appeal No. 266 of 1996.
- [10] CAP 75, Laws of Kenya.
- [11] Act No. 2 of 2013.
- [12] Article 157 of the constitution.
- [13] *DPP vs Meakin* {2006} EWHC 1067.
- [14] 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.
- [15] See *Bennett vs Horseferry Road Magistrates' Court and Another* [1993] 3 All E.R. 138, 151, HL; see also *R vs Methyr Tydfil Magistrates' Court and Day ex parte DPP* [1989] Crim. L. R. 148.
- [16] 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.
- [17] *Natasha Singh vs. CBI* {2013} 5 SCC 741.
- [18] See *Maharashtra vs Arun Gulab Gawali*.
- [19] 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.
- [20] {1993} All E.R 138, 151, House of Lords.
- [21] Chris Corns, *Judicial Termination of Defective Criminal Prosecutions: Stay Applications*, 76 University of Tasmania Law Review, Vol 16 No. 1, 1977.
- [22] Sir Rupert Cross, *Statutory Interpretation*, 13th edn. (1995), pp.172–75; J. Burrows, *Statute Law in New Zealand*, 3rd edn. (2003), pp.177–99. For a recent example in Canada see *ATCO Gas and Pipelines Ltd vs Alberta (Energy and Utilities Board)* [2006] S.C.R. 140.
- [23] *Republic vs Attorney General ex-parte Arap Ngeny* HCC APP NO. 406 of 2001.
- [24] Indian Case of *Pulukiri Kotayya vs Emperor* L.R. 74 Ind App 65.