



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL DIVISION**

**MISC. CRIMINAL APPLICATION NO.200 OF 2018**

**JACK RICHARD OJIJO..... APPLICANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**RULING**

Before me is an application made by the Applicant purportedly under **Sections 3, 81(3), 362 and 364** (presumably of the **Criminal Procedure Code**) and **Articles 49(1)(h), 50 and 51** of the **Constitution** seeking orders of this court to stay the delivery of the judgment in **Criminal Case No.1534 of 2014** pending the hearing and determination of the application. The Applicant seeks an order from the court for the reopening of the prosecution's case and the recall of PW1 Daniel Gutu (a document examiner) so that he can be further cross-examined by the Applicant. The application is supported by the grounds stated on the face of the application and the annexed affidavit of the Applicant. The application is opposed.

Prior to the hearing of the application, this court called for and perused the trial court's file with a view to ascertaining some of the issues raised by the Applicant in the present application. During the hearing of the application, Mr. Arum for the Applicant submitted that during the trial, a document examiner, one Chief Inspector Gutu testified in the case. There was reference to a statement made by one Joan Injehu. He complained that this witness was not called to testify in the case by the prosecution. He further testified that some of the exhibits referred in the document examiner's report were not produced into evidence by the prosecution. It was in that regard that the Applicant was seeking for the prosecution's case to be reopened so that the document examiner can be recalled to be cross examined on the contents of the report.

Ms. Sigei for the State opposed the application. She submitted that the Applicant was supplied with the documents prepared by the prosecution before commencement of the trial. The Applicant had all the opportunity to note any discrepancy in the documents and seek clarification from any of the prosecution witnesses. Learned counsel was of the view that the application had been made very late in the day after both the prosecution and the defence had closed their respective cases. She urged the court to dismiss the application.

This court has carefully considered the rival submission made by the parties before this court. As stated earlier in this Ruling, this court called for the Chief Magistrate's Court case file. It has perused it. It has noted that both the prosecution and the defence have closed their respective cases. The case has been reserved for judgment. The Applicant's reason for seeking to have the case reopened is not tenable in law. The Applicant had sufficient time to prepare for his defence. He was charged in October 2014. The case was finalized on 19<sup>th</sup> February 2018. The Applicant had no excuse not to prepare for his defence. He is represented by counsel. If there are any issues that he noted during trial, he should have raised them at the appropriate time.

It is not by accident that the **Criminal Procedure Code** does not contain any provision for "**arresting or staying a judgment**" before its delivery. The Applicant should await the delivery of the judgment, and if aggrieved, lodge an appeal to the High Court. That is the reason why the Applicant could not cite even a single provision in the **Constitution** or in the **Criminal Procedure Code** that gave him *locus standi* to make the present application. The application is without merit.

It is hereby dismissed. The Chief Magistrate's Court file is sent to that court so that judgment can be delivered as scheduled. It is so ordered.

**DATED AT NAIROBI THIS 10<sup>TH</sup> DAY OF JULY 2018**

**L. KIMARU**

**JUDGE**