



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KERUGOYA**  
**CRIMINAL APPEAL NO. 4 OF 2014**

**SIMON NJIRU KARAGA.....APPELLANT/ACCUSED**

**-VERSUS-**

**REPUBLIC.....RESPONDENT**

*(Appeal from the original conviction and sentence in Criminal Case Number 524 of 2012*

*in the Chief Magistrate's Court at Kerugoya – HON. K.K.CHERUIYOT (Ag.P.M)*

**JUDGMENT**

1. SIMON NJIRU is the appellant herein and filed this appeal against the ruling of Hon. K.K. Cheruiyot, Principal Magistrate Kerugoya delivered on 8<sup>th</sup> January, 2014 in KERUGOYA PM CR. NO. 524/12 (a Criminal Case that was formerly Embu CM's Court Cr. No. 609/11).
2. In this appeal, the appellant was aggrieved by the said ruling which was in respect to a Notice of Motion dated 8<sup>th</sup> July 2013 presented in the same trial Court.
3. Before I list down the grounds of appeal in this appeal it is proper to look at what the prayers were in the Notice of Motion dated 8<sup>th</sup> July 2013 in order to get a clear prospective in this appeal and the case facing the appellant in the trial Court. The appellant in the said application sought the following prayers or what he termed as "**orders**" from the trial Court:-
4. (i) *That vide Justice Abuodha High Court Kerugoya Directions/Ruling dated 28<sup>th</sup> May 2013 in Miscellaneous Application No. 6/2013, this application be heard on priority to prosecution of this Criminal Case No. 524/12 (sic).*
  - (ii) *That the Court also consider authority of High Court Embu Civil Appeal No. 67/05, the clause that, injustice has been done to the applicant/accused herein, page 7-8 through Court misled by the witness Ann Wangai Alias Wangira, her listed children and her advocate and condemned to pay all costs to the applicant/accused herein (sic).*
  - (iii) *The OCS Itabua Police Station drew two charge sheets on 12/4/2011 which were presented to prosecution to present before Embu Court (sic).*
  - (iv) *That on 12/3/11 Embu Lower Court prosecution erred by choosing between two charge sheets and presenting the invalid charge sheet to Court leaving the valid charge sheet both*

*drawn by OCS Itabua Police Station, Embu (sic).*

*(v) The charge sheet which was of priority and which was not produced in Court and is in the custody of prosecution on a charge of giving false information to police drawn on 12/3/11 by OCS Itabua Police Station be produced before Court for directions and for certification of applicant's copy (sic).*

*(vi) There was no complaint report in Itabua Police Station Occurrence Book by Evangeline Njoki in the month of March and April 2011 and she is therefore not a complainant (sic).*

*(vii) That the charge sheet on breaking in, stealing and malicious damage in the Court file has no name/record of any police witness (sic).*

*(viii) That the charge sheet on breaking in, stealing and malicious damage in the Court file is silent, concealed, technical eviction and is a heavier charge than the exposed charge (sic).*

*(ix) That the charge sheet presented to Court on breaking in, stealing and malicious damage drawn on 12/3/11 by OCS Itabua Police Station be declared invalid and misleading to Court.*

*(x) That the complainant and witness in the charge sheet on breaking in and malicious damage be declared to be misusing the Police Institution and lower Court (Judiciary) to defeat/disobey a High Court judgment dated 29/03/89 and three rulings dated 29/06/04, 19/09/06 and 27/09/07 in Embu Succession Cause No. 876/02, so as to do injustice to the applicant/accuse (sic).*

*(xi) That the applicant/accused herein be included as a witness in the charge sheet on giving false information to Court in addition to the two recorded Police officers (sic).*

*(xii) That the Court do supply the applicant/accused with correct certified Kerugoya Court proceedings (sic).*

*(xiii) That the prosecution in Kerugoya lower Court disobeyed Court order dated 26/02/2013 to produce Police OB from Itabua Police Station during hearing on 23/04/2013 (sic).*

*(xiv) That the prosecution be declared to have failed to prosecute its case for 5 consecutive hearings and without any good reason.*

*(xv) That the prosecution be declared to have lost right of prosecuting or making any prayer in its case.*

*(xvi) The case adjourned on 23/4/13 be declared illegal.*

*(xvii) That the Court summons to a Police witness on 23/4/13 namely Mr. Murimi be declared illegal.*

*(xix) Costs of this application be provided for by those who gave false information to Police.*

5. The above motion was supported by what the applicant viewed as 12 grounds but in essence were submissions on the case at the trial Court and many other related cases pending or concluded in other Courts.

6. It was on the basis of the above that the trial Court on 8<sup>th</sup> January 2014 ruled that what the applicant had raised were factual issues that could be best be canvassed and determined during the trial against the appellant herein. The trial Court found no merit on the same and dismissed it. Aggrieved by the ruling, the appellant then preferred this appeal and raised the following grounds against the ruling:-

7. (a) *That the Hon. Principal Magistrate erred on 5/12/13 during the hearing of the appellant's*

**application dated 8/7/13 by barring the appellant from reading the contents of his application for the purposes of record as part of proceedings (sic).**

**(b) That the Hon. Principal Magistrate erred by failing to record any prayer, failed to record any ground and failed to record any content of the affidavit's annextures, failed to record any content of application dated 8/7/13 both during hearing and in his ruling (sic).**

**(c) That the Hon. Principal Magistrate erred by failing to note and record that the said application dated 8/7/13 was not opposed. He erred by dismissing an un-opposed application and without giving reasons (sic).**

**(d) That the Hon. Principal Magistrate erred by dismissing application dated 8/7/13 in total while he had granted prayer 1 informally "which prayer enabled the application be heard on priority" (sic).**

**(e) That the Hon. Magistrate erred by contradicting his ruling immediately after delivery since he had formally dismissed prayer 12 among other prayers while he allowed the same prayer when the appellant appealed to him verbally "that he needed certified proceedings to enable him appeal" (sic)**

**(f) That the Hon. Principal Magistrate erred by dismissing the application dated 8/7/13 because in his ruling, he had made two conclusions in which he declared that he had not determined the applicant's issues; (sic)**

**First conclusion; "I have come to the conclusion that ascertaining all that the accused has raised are trivial matters which can be best canvassed and determined during trial" (This implied he had not determined) (sic).**

**Second conclusion; In conclusion, I find as noted by the order of J.N. Abuodha Judge dated 20/5/13 that the record/applicant's best interest will be served in expediting the trial of this case during which trial all the evidence for and against the accused will be tendered for Court to consider and arrive at a final determination of issues raised (sic).**

**(g) That the learned Principal Magistrate erred in law by dismissing issues which he had declared in his conclusions that he had not determined (sic).**

**(h) That Hon. Principal Magistrate erred in his conclusions that he dismissed issues which can be determined in another trial while dismissed issues cannot be raised again for retrial (sic).**

**(i) That Hon. Principal Magistrate erred by misinterpreting Justice Abuodha's directions as meaning issues to be raised in a retrial while the ruling directed he resolves/deals with the issues (sic).**

**(j) The Hon. Principal Magistrate erred by classifying and dismissing the issues raised by the applicant as trivial since issues are not dismissed because they are trivial (sic). Further, the Hon. Principal Magistrate erred by failing to see annexure SN 1 (the charge sheets) which shows the issues were drawn deliberately to misuse the Police Institution, misuse Court which is serious not trivial (sic).**

**(k) That the Hon. Principal Magistrate erred by failing to be specific on each issue and erred by classifying all the issues into one. He erred by failing to determine each issue on its own merit.**

**(l) The Hon. Principal Magistrate erred by dismissing appellant's prayer that the charge sheet on giving false information to police be produced in Court.**

***(m) That the Hon. Principal Magistrate erred by failing to see the existence of a charge sheet on giving false information to police disqualified/nullified the charge sheet on stealing and malicious damage automatically (sic).***

***(n) The Hon. Principal Magistrate erred by failing to see and ignoring errors and misconducts by prosecution as shown in prayers 4, 9, 13, 14, 15, 16, 17 & 18 which prayers were neither recorded or considered (sic).***

8. The appellant in support of the grounds set in his petition further filed supplementary affidavits with leave of this Court in which he basically annexed copies of the proceedings, statements of witnesses, a charge sheet that was not presented to trial Court and other Police records related to the case facing him at the trial in the lower Court.

9. The appellant submitted at length at the hearing of this appeal and the main gist of the appeal was that the complainants in the case facing him were supposed to be charged with the offence of giving false information to the police concerning the incident where he is accused of house breaking and committing a felony. According to the appellant, the incident never took place and the complainant who is a stepmother to him and her children, are out to use criminal process to achieve a civil objective which is to evict him from a disputed family land. The appellant was dissatisfied by the apparent discriminative action by the police who chose to charge him in Court instead of charging one EVANGELINE NJOKI and ANNA WANGAI ZAKAYO who had been arrested but failed to be taken to Court.

10. The appellant contended that the production of the OB from Itabua Police Station would have clearly vindicated his argument that the charges in the lower Court should be invalidated. He argued that the OB was to be produced on 26<sup>th</sup> February 2014 but was not and that he had tried to present valid documents at the trial but the same were not accepted.

11. The respondent in this appeal through Mr. Sitati opposed this appeal arguing that the application dated 8<sup>th</sup> July 2013 demonstrated that the appellant herein is a vexatious litigant who has made numerous applications to frustrate the criminal proceedings vide Criminal Case No. 524/12 against him.

12. The State further pointed out that the appellant's conduct in Embu saw many Judicial officers including a Judge in Embu High Court recusing themselves which served to delay the case against the appellant.

13. Mr. Sitati supported the learned magistrate's view that the concerns and the issues raised by the appellant were to be addressed at the trial and that the criminal case against the appellant had proceeded in accordance with the law save for the frustrations by the appellant.

14. The State further pointed out one of the exhibits in the appellant's application dated 8<sup>th</sup> July 2013 which was an order by Justice Abuodha recommending and directing that the case against the appellant to be expedited for the interest of justice and contended that the same was a basis for ruling of the lower Court which ruling is now the subject of this appeal.

15. Mr. Sitati further contended that the appellant will have a chance to defend himself at the trial Court where he can adduce evidence and attack the prosecution case.

16. I have considered the grounds set out in this appeal in addition to the submissions made by the appellant in person who kept asking this Court to hear him and requested for leave to file further documents to support his appeal. This Court allowed him and he filed two further supplementary records where he enclosed further documents in support of his appeal which I have had occasion to go through.

17. In his first ground of appeal, the appellant states that he was denied the chance to read out his application dated 8<sup>th</sup> July 2013 when it was being heard on 5<sup>th</sup> December 2013. I am however not persuaded by the grievance since the said application was formal and was on record. The trial magistrate

was under no obligation to let the appellant read word for word in an application that was already in Court file. There was no need for the appellant to do so as the same would be a waste of Judicial time and in any event, there was no prejudice to the appellant for being denied the chance to read all the contents of his application.

18. Secondly, the appellant stated that the learned magistrate erred by not recording the prayers he was seeking or the basis upon which he was seeking those prayers and that the ruling is silent. However, I have noted from the ruling that the trial Court touched on the substance of the reliefs sought and in summary manner ruled that the issues raised by the applicant were factual that could best be canvassed at the trial. The appellant has not faulted that finding and I do find that the Notice of Motion dated 8<sup>th</sup> July 2013 really had no substantial prayer or viable relief to the appellant in so far as his trial is concerned. The application with due respect to the fact that he was unrepresented actually contained what can be termed as submissions by the appellant about his defence to the charges facing him. The trial magistrate was therefore in order to rule as he did that the matters raised could be canvassed at the hearing of the case. I also find that the appellant has not disclosed to this Court any prayer that could not be addressed at the trial or in the course of hearing of the case facing him.

19. The appellant raised in ground three of his appeal that his application dated 8<sup>th</sup> July 2013 should have been allowed automatically as it was unopposed. That contention is not only mistaken but incorrect. Any application or even a case for that matter is considered on merit based on the law and not any other consideration. Whether it is opposed or not. The trial Court dismissed the application dated 8<sup>th</sup> July 2013 when it found no merit in the same as the issues raised could be ventilated at the trial. I find the reasoning by the trial Court sound and I do find that the appellant's view that his application was dismissed by the trial Court "**without giving reasons**" a contradiction to his ground 6 of his appeal.

20. In ground 6 of his petition of appeal, the appellant stated that the learned magistrate erred by dismissing his application by making what he termed as 2 conclusions which were that the application had raised trivial matter that could be canvassed at the trial and that as noted by Justice Abuodha, the appellant's interest would best be served by expediting the trial.

The appellant in a strange twist is in agreement with the finding of the learned magistrate on the fact that the issues raised by the appellant in his application could not be determined at the stage of hearing of the application dated 8<sup>th</sup> July 2013. It is true that the issues whether trivial or weighty needed to be canvassed at the trial. The State has faulted the appellant for frustrating the prosecution of the criminal case against him which would have given him a chance to ventilate his grievances against the police or anyone involved in the criminal case against him. Among the issues to be determined are whether or not the police were misused as raised in ground ten in his petition of appeal. This issue among many issues raised in the application are to be determined during trial as correctly put by the trial magistrate.

21. Ground 7 and 8 of the petition are not well stated but if the appellant meant that the trial magistrate erred by stating that the issues raised by the appellant in his application dated 8<sup>th</sup> July 2013 are issues for trial, then he is misguided. If for example there are lawful orders issued by Courts of law touching on property in dispute and the prosecution of the case against the appellant violates any of those orders, the appellant only need to bring the orders to the attention of the trial Court and the same if relevant shall be considered. The application made to the trial Court however never disclosed the nature of the orders the appellant may have got when it was incumbent upon him to annex any copy of any order if any barring his prosecution before the trial Court. It is not enough just to allege that his prosecution at the trial Court is a disobedience of Court orders.

22. On the issue of justice Abuodhas's ruling and delivered on one of the appellant's many applications, the appellant contended that the trial magistrate misinterpreted the directive. However, going by this Court's finding over the same vide a ruling delivered by this Court on 24<sup>th</sup> day of November 2014, I believe that the ruling rested any misconceptions the appellant may have hitherto had about what the Judge meant by directing that the best interest of the appellant would be served by expediting his trial. This is what the trial Court tried to do before the appellant threw another spanner in the progress of the

case that appears to have grounded the case despite this Court's ruling overruling the appellant's attempt to stay the criminal proceedings at the trial Court. Mr. Sitati's assertions that that the prosecution has been frustrated by the appellant at the trial Court appears justified in the circumstances.

23. The appellant may be raising important issues in this appeal which were raised in his application dated 8<sup>th</sup> July 2013 but however weighty the issues are, the trial Court ruled that the matters raised were to be dealt with at the trial as they were matters of fact. The appellant stated that the police had initially opined that the complainants in the case facing him at the trial were to be charged for false information. That fact is an issue that the appellant can raise at his trial and use it as a weapon in his defence. No one has denied him that right and this appeal just serves to delay his day in Court so to speak and that is why the State has raised concerns about the conduct of the appellant complaining that he is vexatious and out to waste away Judicial time. This Court considers it fair and just not to make any finding in this regard so as not to prejudice the appellant in his trial.

24. The appellant's contention that the trial magistrate was not specific on each issue he raised and that he erred by summarizing all the issues into one is misconceived. There is no hard and fast rule on how a ruling or a judgment for that matter should be written. It is usually a discretionary issue and different Judicial officers and Judges have different styles of writing judgments and rulings. The appellant cannot validly fault the learned magistrate in his style of writing a ruling unless he points out an important issue which was left out and in his view could have changed or altered the course of the ruling. The appellant has pointed out none in his appeal because none was left out.

25. On the question of production of evidence to be used by the appellant in his defence to wit a charge sheet which was never presented to Court, the appellant is better advised to seek counsel from an advocate. Criminal proceedings are conducted in accordance with ***Civil Procedure Code*** Every step taken by Courts of law in conducting criminal trials is anchored on the law. Almost all the prayers in the appellant's application dated 8<sup>th</sup> July 2013 are really strange in law and the appellant perhaps with better insight and counsel should not have been surprised that the same were dismissed and more specifically that prayer 5 of his application was not sustainable at that stage of the proceedings. The existence of another charge sheet in respect to giving false information by any of the witnesses lined up by the prosecution is an issue of fact which the trial Court had not even had the occasion to establish because the basis of the same if any had to be laid out before such a prayer could be entertained by the Court.

26. The appellant faulted the prosecution in their conduct of the trial accusing them and the trial Court for various misdeeds. I have had the occasion to look at the record and the cause for the delay really centres on the conduct of the appellant. He has bashed almost any Court or prosecutor who has failed to be swayed and therein lies danger of miscarriage of justice. Courts of law are there to administer justice without fear or favour. The office of Director of Public Prosecution has the Constitutional mandate to conduct prosecution in this country and does so independently. The Court and least of all an accused person has no role to advise the prosecution on what and when to prefer charges or what evidence to offer in the prosecution of cases before Courts of law. An accused person has his rights and deserves justice but in the same way a complainant to case also deserves justice and the rights of a complainant deserves an equal space in the seat of justice.

The appellant was supplied with all the statements and documents in relation to the case facing him and I do not find any basis for him to complain about how the prosecution have conducted their case so far. Of course in a case such as the one facing the accused which was transferred from another jurisdiction (at the instance of the appellant), - one would expect normal hitches here and there on the trial in view of the distance and other administrative issues.

27. As I have stated, it is a misconception for the appellant to imagine that as an accused person he has a right to direct the prosecution on how to prosecute him, who to call as witnesses and more specifically who should be the Investigating officer in a case facing him or any other case for that matter. Criminal proceedings are as I have observed conducted in accordance with the law (***Criminal Procedure Code & the Constitution***). The appellant has not faulted the prosecution or the trial Court on any infringements of his rights as an accused person. His complaints majorly centre on his defence as I have stated and the

trial had not reached the stage where he could be allowed to bring up the sentiments. I do find that to that extent, the sentiments or complaints raised in this appeal are premature and the appellant is advised to seek legal aid or assistance to help him save his energies and Judicial time for trial rather than numerous applications and appeals that only serves to delay trial and derail the course of justice.

28. The upshot of this is that this Court finds no merit in the appeal herein. It is dismissed. The Criminal Case No. 524/12 against the accused shall proceed and in order not to waste more time, the file is directed to be mentioned on 27<sup>th</sup> May, 2015 before the Chief Magistrate's Court for re-allocation and fixing a hearing date as per the diary of that Court.

**R.K. LIMO**

**JUDGE**

**6/5/2015**

6/5/2015

Before

Hon. Justice Limo

State Counsel - Omayo

CC – Willy

Appellant - present

Omayo for State present

Simon Njiru Appellant present in person

COURT: Judgment signed, dated and delivered in open Court in the presence of Appellant who appears in person and Omayo for State/Respondent.

**R.K. LIMO**

**JUDGE**

**6/5/2015**

SIMON NJERU

There is a mention in the lower Court on 27<sup>th</sup> May, 2015. I pray that the matter be mentioned on that day instead of today.

OMAYO – I have no objection for the matter being mentioned on 27<sup>th</sup> May, 2015. May the lower Court file also be released back to the trial Court for further hearing.

COURT

The Criminal Case No. 524/12 be mentioned on 27<sup>th</sup> May, 2015 before the Chief Magistrate's Court. The lower Court file attached to this appeal be taken back to the Chief Magistrate's Court for trial.

**R.K. LIMO**

**JUDGE**

**6/5/2015**