



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NYERI**  
**CRIMINAL REVISION NO. E160 OF 2025**

**SEMI-CONDUCTOR TECHNOLOGIES LTD.....**  
**APPLICANT**

**VERSUS**

**REPUBLIC.....1<sup>st</sup>**  
**RESPONDENT**

**ANDREW WAIGWA MWAI.....2<sup>ND</sup>**  
**RESPONDENT**

**RULING**

1. The matter came up for directions on the application dated 13.11.2025 and filed on 14.11.2025. The court directed that the same be fixed for hearing on 19.11.2025. Parties argued why the court should review the 2.10.2025 ruling. I directed that the proceedings due on 20.11.2025 be stayed pending my verdict this morning.

2. Unlike the practice in criminal matters, the prosecution of the application was spearheaded by the complainant. The main contention was that the lower court closed the case

before the investigating officer could testify. I was invited to call for the file and be satisfied with the legality of the proceedings.

3. The applicant insisted that they had only adjourned once in the whole 16 times. I called for the file and noted that Hon Angima had handled it up to 19.11.2024. Hon Cheruto C Kipkorir took over and took directions under section 200 of the Criminal Procedure Code. The matter came up for further hearing on 29.04.2025, but the investigating officer gave reasons why it could not proceed. At that time, the accused complained that it was an old matter. On 17.7.2025, the court reminded the parties that this was their last adjournment, as the case was old. *The raison d'être* for not calling some witnesses was that the persons to testify were not given permission.
4. It is a rather bizarre excuse, as court summons must always be obeyed. It is not a convenience of the summoned. A witness testified. The investigating officer, who was in court, disappeared. The prosecutor requested time up to 11 am to avail the investigating officer. At 11 am, the court was informed that the investigating officer had switched off his phone and was nowhere to be found. The court placed aside as the prosecutor appeared to indicate that the witness was on the way.

5. At 11.15 am, the prosecutor indicated that the investigating officer had switched off the phone and was called several times in vain. The court ordered the prosecution's case closed. The ruling was set for 20.11.2025. It is not until 14.11.2025 that this application was filed, not by the prosecution but by the complainant.
  
6. The applicant did not disclose that they had a last adjournment given to both parties on 29.04.2025. The last adjournment was not made on the impugned day. Knowing that they had a last adjournment, they could have done better. The court has discretion whether to enforce the last adjournment. However, the investigating officer, who had earlier been in court, decided to go underground. At that time, the court had two options: to close the case or to issue a warrant for the arrest of the investigating officer. The court chose one of the options. This is what is known as discretion. The second option was not placed before the court by the prosecutor seeking a warrant of arrest. The court proceeded to exercise discretion. It is this decision that is sought to be reviewed.
  
7. The applicant relied on the case of **Waswa v Republic** (Petition 23 of 2019) [2020] KESC 23 (KLR) (4 September 2020) (Judgment) **/Joseph Lendrix Waswa v Republic [2020] eKLR**. It is this same decision where the supreme court [DK MARAGA, CJ & P, MK IBRAHIM, SC WANJALA, N

NDUNGU & I LENAOLA, SCJJ] settled the place of the victims in a trial as follows:

The right to have a trial commence and conclude without unreasonable delay was an accused person's constitutional guarantee under article 50(2)(e) of the Constitution. A victim also had the right to have the trial begin and conclude without unreasonable delay under section 9(1)(b) of the Victim Protection Act (VPA). In addition, article 159(2)(b) of the Constitution obligated courts not to delay justice.

Further, treaties and international instruments that Kenya had ratified such as the African Charter on Human and People's Rights, Rome Statute of the ICC, and the International Covenant on Civil and Political Rights (ICCPR) contained similar provisions, that bound the court in all criminal justice procedures and processes.

8. The Supreme Court in **Waswa v Republic** (supra) gave the following guidelines for participation of the victims. that :

The following guiding principles would assist the trial court when it was considering an application by a victim or his legal representative to participate in a trial and the manner and extent of the participation:

- a. The applicant had to be a direct victim or such victim's legal representative in the case being tried by the court;

- b. The court should examine each case according to its special nature to determine if participation was appropriate, at the stage participation was applied for;
- c. The trial court had to be satisfied that granting the victim participatory rights should not occasion an undue delay in the proceedings;
- d. The victim's presentation should be strictly limited to the views and concerns of the victim in the matter granted participation;
- e. Victim participation should not be prejudicial to or inconsistent with the rights of the accused;
- f. The trial court could allow the victim or his legal representative to pose questions to a witness or expert who was giving evidence before the court that had not been posed by the prosecutor;
- g. The trial court had control over the right to ask questions and should ensure that neither the victim nor the accused were not subjected to unsuitable treatment or questions that were irrelevant to the trial;
- h. The trial court should ensure that the victim or the victim's legal representative understood that prosecutorial duties remained solely with the DPP;
- i. While the victim's views and concerns could be persuasive; and in the public interest that they

were acknowledged, those views and concerns were not to be equated with the public interest;

j. The court could hold proceedings in camera where necessary to protect the privacy of the victim;

k. While the court had a duty to consider the victim's views and concerns, the court had no obligation to follow the victim's preference of punishment.

9. It is instructive that the prosecution did not find the order an affront to their powers. They came to support the application when it was filed in this court. The order was an exercise of discretion for which the court cannot interfere. The last adjournment was lawfully issued before the impugned date. As a fact, the court is entitled to enforce a zero-adjournment policy which is within the law.

10. The court of appeal [P. Kihara Kariuki, PCA, M'Inoti & Murgor, JJ.A.] in the case of **Ahamad Abolfathi Mohammed & another v Republic [2018] KECA 743 (KLR)** addressed the question of discretion as follows:

As what is challenged in this appeal regarding sentence is essentially the exercise of discretion, as a principle this Court will normally not interfere with exercise of discretion by the court appealed

from unless it is demonstrated that the court acted on wrong principle; ignored material factors; took into account irrelevant considerations; or on the whole that the sentence is manifestly excessive. In *Bernard Kimani Gacheru v. Republic*, Cr App No. 188 of 2000 this Court stated thus:

It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist.

11. Even where there is no last adjournment, the court is entitled to exercise its discretion judiciously. The court cannot issue a revision order on the basis of properly

exercised discretion; it is not enough that this court could have issued a different order.

12. Consequently, the proceedings were proper. The application is dismissed. The case is hereby remitted to the lower court for it to issue directions on the pending ruling. Stay of proceedings is lifted.

### **Final Orders**

13. In the circumstances, I make the following orders: -

- a) The application dated 13.11.2025 is dismissed for lack of merit.
- b) The lower court file is hereby remitted back for the court to issue directions on the pending ruling.
- c) Stay of proceedings is lifted.
- d) The lower court file is fixed for directions on 25.11.2025 before the trial court. The 2<sup>nd</sup> Respondent to attend.
- e) The file is closed.

**DELIVERED, DATED, and SIGNED** at **NYERI** on this **21<sup>st</sup>** day of **November 2025**. Ruling delivered through Microsoft Teams Online Platform.

**KIZITO MAGARE**  
**JUDGE**

**In the presence of: -**

Ms. Kimani for the Applicant

Mr. Kimani for the 1<sup>st</sup> Respondent

Ms. Wambui Mwai for the 2<sup>nd</sup> Respondent

Court Assistant - Michael