Karanja v Republic & 2 others (Criminal Miscellaneous Application E061 of 2025) [2026] KECA 20 (KLR) (16 January 2026) (Ruling)

Neutral citation: [2026] KECA 20 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NYERI

CRIMINAL MISCELLANEOUS APPLICATION E061 OF 2025

A ALI-ARONI, JM MATIVO & PM GACHOKA, JJA

JANUARY 16, 2026

BETWEEN

JOHN KING'OO KARANJA ..... APPLICANT

AND

REPUBLIC ..... 1ST RESPONDENT

KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED .... 2ND RESPONDENT

DIRECTORATE OF CRIMINAL INVESTIGATIONS ..... 3RD RESPONDENT

(Being an application for stay of proceedings in the Magistrate's Court at Rumuruti in Criminal Case No. E310 of 2024 against the ruling of the High Court of Kenya at Nanyuki (Ndungu, J.) dated 18th September 2025 in Criminal Revision Application No. E086 of 2025)

RULING

1. This ruling determines the application dated 18th November 2025 filed by John King'oo Karanja (the applicant) in which he is beseeching this Court to stay the proceedings before the Magistrates' Court at Rumuruti, being Criminal Case No. E310 of 2024, Republic vs John Mutua Kingo, pending the hearing and determination of his intended appeal against the ruling of the High Court (Ndungu J.), delivered on 18th September 2025 in Nanyuki High Court Criminal Revision Application No. E086 of 2025, Kenya Electricity Transmission Company Limited vs Republic and John Mutua King'oo alias Karanja and Directorate of Criminal Investigations (interested parties). In the said ruling, the learned Judge overturned the applicant's plea of guilty which was entered following a Plea-Bargaining Agreement and directed that the matter proceeds for fresh hearing. The application is brought under sections 207 and 208 of the Criminal Procedure Code & article 50 (2) of *the Constitution*.

2. In order to properly contextualize the application, a brief background of its history is necessary. This history is essentially straight forward and uncontroverted. Briefly, on 14th March 2024, energy materials whose approximate value was Kshs.14,479.560.00 were stolen at the Kenya Electricity Transmission Company (KETRACO), Rumuruti sub-station. The incident was reported at the Rumuruti Police station. Police investigations led to the arrest of three suspects, among them the applicant. The suspects were subsequently arraigned before the Principal Magistrates Court at Rumuruti in Criminal Case No. E310 of 2024, Republic vs John King'o & others jointly charged with the offences of conspiracy to commit a felony contrary to section 393 of the Penal Code and stealing contrary to section 169 of the *Energy Act* No. 1 of 2019. Two of the suspects faced alternative counts of neglect to prevent a felony.

3. When the lower court case came up for hearing on 10th March 2025, the applicant informed the Court that he had an application for plea bargaining and wanted it to be heard on the same day. The prosecutor, one Mr. Limisi, informed the Court that he had consulted with the applicant and the Investigating Officer who had agreed with the applicant that he would plead guilty to count 2 (stealing contrary to section 169 (1) (c) of the *Energy Act*) and that the state would withdraw count 1 (conspiracy to commit a felony contrary to section 393 of the Penal Code). The prosecutor presented to the Court a Plea Bargaining Agreement dated 10th March 2025, signed by the prosecutor and the applicant herein. The learned Magistrate accepted the Plea Bargaining Agreement and sentenced the applicant to 3 years imprisonment, or, in the alternative, to a fine of Kshs.200,000.00.

4. Aggrieved by the said decision, the 2nd respondent (Kenya Electricity Transmission Company Ltd (KETRACO), (the complainant) filed a notice of motion dated 24th March 2025 before the High Court at Nanyuki being High Court Criminal Revision Application No. E086 of 2025 seeking to review and or set aside the Plea Bargain Agreement dated 10th March 2025 entered between the applicant and the prosecution.

5. The application was premised on the grounds inter alia that the 2nd respondent was the victim of the alleged theft, that the Plea Bargaining Agreement did not conform with the provisions of section 137 D of the Criminal Procedure Code which requires the prosecutor to consult with the victim of the offence by affording him/her or their representative the opportunity to make representations regarding the contents of the agreement. The 2nd Respondent also faulted the Plea Bargaining Agreement for not complying with sections 9 (1) (c) and 20 (I) (b) of the Victims Protection Act, which grants the victim of the crime the right to give their views and also to submit any information to the Court in any plea bargaining. The applicant also asserted that this right is also envisaged in several other codified guidelines including The Criminal Procedure (Plea Bargaining) Rules of 2018 and the Office of the Director of Public Prosecutions Plea Bargaining Guidelines, 2019 ODPP Plea Bargaining Guidelines) which require the prosecutor to inform the victim of the terms and the status of the Plea Agreement and accord them the opportunity to make representations on the plea agreement.

6. The applicant contended that despite the clear provisions of the law, the prosecutor did not accord it, being the complainant and victim of the offence, the opportunity to make its representations regarding the plea agreement. Further, the prosecutor admitted in Court that he only engaged the DCI and the Investigating Officer, effectively admitted ignoring the victim's views.

7. The 2nd respondent also cited Part 41 of ODPP Plea Bargaining Guidelines which requires a prosecutor to inform any other Government agency or regulatory body that has an interest in the accused person on the status of the plea negotiation and enquire whether they wish to take part in the plea negotiations, and added that the prosecutor did not inform it, despite being the victim and a Government agency with key interest in the plea negotiations. It was the 2nd respondent's case that this critical omission rendered the Plea Bargaining Agreement irregular. In addition, the 2nd respondent contended that

contrary to Part 2B of the ODPP Plea Bargaining Guidelines which requires consultation and appraisal of the DPP on the plea agreement before commencement or during negotiations, even though the case involved a State Agency that plays a critical role of public interest, the DPP was not consulted or appraised nor did the prosecutor consider the impact of the plea agreement on the victim and the community contrary to contrary to Part 2 F of the Guidelines.

8. The 2nd respondent further faulted the trial court for failing to satisfy itself that the laid down procedures and law on plea agreements had been adhered to and its failure to inquire whether the victim had been involved in the process. The 2nd respondent also complained that its letters to the DPP complaining about the irregular plea bargaining elicited no response.

9. It was the 2nd respondent's case that section 362 of the Criminal Procedure Code empowers the High Court to examine the record of any criminal proceedings for the purposes of satisfying itself as to the correctness, legality or propriety of any finding, sentence, or order recorded or passed.

10. In opposition to the application, the 1st respondent maintained that the plea bargaining was properly entered into in that it complied with section 137 (1) of the Criminal Procedure Act and the Guidelines and section 9 (1) (c) and 20 (1) (b) of the *Victim Protection Act*, therefore, the sentence passed was proper and lawful.

11. In the impugned ruling dated 18th September 2025, after considering the diametrically opposed argument tendered by the parties and the law, Ndungu, J. held that the proceedings were tainted by discernable irregularities and non-compliance with the law, namely the earlier cited provisions of the *Victim Protection Act*, the Criminal Procedure Act and the Guidelines, therefore, the proceedings were amenable to the review jurisdiction of the High Court. Consequently, the learned Judge set aside the plea bargaining agreement and ordered that the case proceed to a full trial before any other Magistrate other than M. Wachira, PM.

12. Aggrieved by the said ruling, the applicant filed a notice of appeal dated 18th September 2025 and lodged at the High Court Registry at Nanyuki on 20th November 2025, signifying his intention to appeal to this Court against the said ruling.

    Notably, although the notice of appeal clearly states that it seeks to appeal against the High Court Ruling, the instant application seeks to stay the proceedings before the Principal Magistrates Court at Rumuruti, being Criminal Case No. E310 of 2024 Republic vs John Mutua Kingo pending the determination of the appeal against the High Court Ruling. We shall comment on this disparity later.

13. The key grounds in support of the application can be summed up as follows:

    i. That the appeal raises serious arguable grounds, including the plea was unequivocal and voluntarily entered and the sentence was fully satisfied and thereby the matter concluded;

    ii. The revision was invoked in a manner inconsistent with the protections under articles 50, 47 and 159 of *the Constitution* and section 207 of the Criminal Procedure Code.

    iii. Unless orders of stay of proceedings before the subordinate court issued pending the hearing of the appeal, the applicant will be subjected to double jeopardy contrary to article 50 (2) of *the Constitution* since a second prosecution on the same facts despite having already pleaded guilty, convicted and having fully served the sentence through a fine of Kshs. 200,000.00 which has never been refunded.

    iv. The appeal would be rendered nugatory if the trial proceeds to hearing before the appellate process is concluded.

14. The 1st and 3rd respondents did not file any response to the application. However, during the hearing, Mr. Naulikha on behalf of the 1st respondent made oral submissions.

15. The 2nd respondent opposed the application vide the replying affidavit sworn on 10th December 2025 by one James Matui, its Senior Security Assistant. Briefly, he states that:

    i. The applicant has moved the court under incorrect provisions of law since none of the provisions invoke the jurisdiction of the court to issue an order for stay of proceedings.

    ii. The notice of appeal was filed and served on the 2nd respondent out of time on 13th November 2025. Therefore, there is no competent appeal on record.

    iii. The intended appeal is not arguable since the issue whether the applicant's plea was unequivocal and voluntarily entered or not did not arise before the Superior Court;

    iv. The applicant is at liberty to apply for a refund of the fine given that the sentence was satisfied through monetary terms, and therefore, the issue cannot be a ground for staying proceedings.

    v. The grounds contained in the memorandum of appeal are not arguable since the said issues were never raised before the superior court for determination, and further, the role of complainants and victims in criminal proceedings is that which has been recognized through codified laws and case laws.

    vi. Even if the stay of proceedings is not granted, the applicant still has an avenue of appeal before the High Court and should it be found that the applicant will have been subjected to an unfair trial, his remedy lies in damages.

    vii. The applicant shall not suffer any substantial loss or irreparable prejudice because he shall be subjected to a second prosecution since double jeopardy only occurs when the conviction or acquittal has not been set aside or varied.

16. During the hearing of this application, learned counsel Mr. Omino represented the applicant, learned state counsel Mr. Naulikha represented the 1st respondent while learned counsel Ms. Morara represented the 2nd respondent. There was no representation for the 3rd respondent.

17. Mr. Omino reiterated the grounds in support of the application contained in the applicant's supporting affidavit and the submissions dated 6th December 2025. On the arguability of the appeal, counsel submitted that there exists a litany of grounds in support of the position that an applicant needs to show that the intended appeal is arguable. He argued that the plea bargain was entered into voluntarily, with the involvement of the prosecution and the investigating officer and that all parties were well represented during the plea bargain.

18. On the nugatory aspect, counsel maintained that the applicant has already served his sentence and therefore the intended trial, if it proceeds, will be contrary to the law since the applicant will be tried for the second time, and this would render the appeal nugatory. Mr. Omino submitted that the provisions of the *Victim Protection Act* that require the victim's views to be taken are purely informative, therefore, they cannot be construed as controlling the D.P.P. and the D.C.I or dictating the courts.

19. Mr. Naulikha, learned counsel for the 1st respondent opposed the application. He submitted that the appeal is not arguable since the participation of a victim is fundamental to criminal proceedings and in this case, there was no involvement of the victim in the Plea Bargaining Agreement. Therefore, the Magistrate's Court should be allowed to proceed with the trial.

20. Ms. Morara, counsel for the 2nd respondent maintained that there is no competent appeal on record to anchor the instant application since Rule 61 of the Court of Appeal Rules requires a notice of appeal to be filed within 14 days from the date in which the aggrieved decision is delivered. The ruling of the Superior Court was delivered on 18th September 2025 while the applicant's notice of appeal dated 18th September 2025 was filed and served on 13th November 2025 and lodged at the registry on 20th November 2025. The same was evidently filed out of time. To buttress her submissions counsel, cited the case of Gituro vs. Maki & 3 Others (Civil Appeal (Application) E050 of 2023) [2024] KECA 1204 (KLR), where the Court struck out an appeal for being filed out of time.

21. On whether the intended appeal shall be rendered nugatory if orders of stay of proceedings are not granted, counsel submitted that the applicant still has an avenue of appeal before the High Court. Counsel cited the case of Katangi Developers Limited vs. Prafula Enterprises Limited & Another [2018] KECA 695 (KLR), in submitting that the continuation of proceedings does not by itself render an appeal nugatory since if the appeal succeeds, the Court of Appeal retains jurisdiction to set aside or vary any orders made.

22. Counsel also cited the case of Kisa vs. Director of Public Prosecutions & 4 Others [2025] KECA 977, and maintained that the applicant neither identified nor demonstrated any exceptional circumstances to warrant the stay of proceedings before the Magistrate's Court.

23. We have considered the application, the relief sought, the grounds in support thereof, the replying affidavits, submissions by counsel and the law. As mentioned earlier, the applicant invoked provisions of the Criminal Procedure Act and *the Constitution*. There is no mention of rule 5 (2) (a) of this Court's Rules, which is the provision which governs an application of this nature before this Court. While we may not penalize the applicant for this omission, we must underscore that rules of procedure serve a salutary purpose and in many instances, failure to comply with the rules can be fatal to an application.

24. The other important point to note is that some rules trigger this Court's jurisdiction such that failing to comply can lead to dismissal of an application. For example, the applicant's notice of appeal specifically states that it is against the Ruling dated 18th September 2025 delivered by Ndungu, J. One would have expected the prayer sought for a stay to be directed to the said ruling but that is not the case. The prayer specifically seeks to stay the criminal proceedings before the Principal Magistrate's Court at Rumuruti and not the High Court decision. Appeals against a decision from the Magistrates' Courts lie in the High Court. The jurisdiction conferred to this Court by article 165 (3) of *the Constitution* and section 3 of the *Appellate Jurisdiction Act* is to hear appeals from the High Court or any other court or tribunal prescribed by an Act of Parliament.

25. Therefore, the prayer sought as crafted is misdirected. As was held by the Australian Supreme Court in SMEC Australia Pty Ltd vs. McConnell Dowell Constructors (Aust) Pty Ltd [2011] VSC 492 at [3]-[6]:

> "Crafting a good pleading calls for precision in drafting, diligence in the identification of the material facts marshalled in support of each allegation, an understanding of the legal principles which are necessary to formulate complete causes of action and the judgment and courage to shed what is unnecessary."

26. The Court in the above decision was categorical that:

> "In a mathematical proof, elegance is the minimum number of steps to achieve the solution with greatest clarity. In dance or the martial arts, elegance is minimum motion with maximum effect. In filmmaking, elegance is a simple message with complex meaning.

> The most challenging games have the fewest rules, as do the most dynamic societies and organizations. An elegant solution is quite often a single tiny idea that changes everything. ... Elegance is the simplicity found on the far side of complexity.
>
> While elegance in a pleading is not a precondition to its legitimacy, it is an aspiration which, if achieved, can only but advance the interests of justice. A poorly drawn pleading, on the other hand, which does not tell a coherent story in a well ordered structure, will fail to achieve the central purpose of the exercise, namelyV communication of the essence of case which is sought to be advanced." (Emphasis added).

27. In our view, it would have been prudent for the applicant to seek a stay of the High Court decision pending the hearing and determination of the appeal. The effect of such a prayer if granted would be restoring the status quo prior to the High Court decision, thus, effectively staying the proceedings before the trial court. This view accords with this Court's decision in Republic vs. The Kenya Anti-Corruption Commission & 2 Others Civil Application No. Nai 51 of 2008 (Unreported) Tunoi, JA. (as he was then) in dealing with the issue of the jurisdiction of this Court to grant an order of stay of criminal proceedings, expressed himself as follows:

> "It would appear logical to say that it seems that the Court can [grant an order of stay] if petitioned on time to stay the order and/or decree of the superior court which will in turn have the effect of staying the criminal proceedings in the superior court. Further, as to whether it can do so or not depends on the particular circumstances of each case and especially so, what exactly the applicant is asking the Court to do and how the Court is approached."

28. Accordingly, we are clear in our mind that the applicant's prayer as crafted is not available from this Court. On this ground alone, this application fails. Having arrived at the said conclusion, it will serve no utilitarian purpose to address the merits or otherwise of this application. Accordingly, the applicant's application dated 18th November 2025 is hereby dismissed with no orders as to costs.

DATED AND DELIVERED AT NYERI THIS 16TH DAY OF JANUARY, 2026.

ALI-ARONI

.....

JUDGE OF APPEAL

J. MATIVO

.....

JUDGE OF APPEAL

M. GACHOKA C.Arb, FCIArb.

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR