REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA CRIMINAL DIVISION

HIGH COURT CRIMINAL REVISION APPLICATION E 565 OF 2024

(CM CR CASE 48 OF 2015 REPUBLIC VS GEORGE MERITEI WARUINGI)

GEORGE MERITEI WARUINGI .....APPLICANT

VS

REPUBLIC/ODPP.....RESPONDENT

RULING

APPLICATION

1. By Certificate of Urgency filed on 9/4/2024, the Applicant ,the Accused person in MCCR NO 48 OF 2015 Republic vs George Meritei Waruingi charged with offence of obtaining goods by false pretences c/s 313 of Penal Code and issuing bad cheques c/s 316 A(1) (a) as read with 316 (4) of the Penal Code,
2. The Hon. Senior Principal Magistrate R.K Ondieki do recuse himself from hearing the case and the matter

be placed before the Hon. Chief Magistrate for reallocation to another Magistrate

3. In the alternative directions be taken under Section 200 (3) of the Criminal Procedure Code for resuming and rehearing the following witnesses
    (a) PW1 -Francis Mwangi
    (b) PW3-Carolyne Kimotho
    (c) PW4-Kimani Rahim
    (d) PW7- Kennethe Kiptum.

GROUNDS OF THE APPLICATION.

1. The application was brought on the grounds that the accused obtained services of New Counsel and it was necessary to recall the witnesses to prevent miscarriage of justice.
2. That the current Judicial Officer did not hear the evidence in the prosecution case.
3. That the accused previous advocate did not adequately challenge the prosecution witnesses testimony.
4. That the accused religiously attended Court until his medical condition worsened. The accused also became blind.

5. That the accused was bedridden on 15/6/2023 after falling in the bathroom .He could not attend Court and he sent Titus Mwangi Gathumbi to attend Court with a letter with the said information.
6. That the subordinate Court disregarded the doctor's letter and issued warrants of arrest against the accused.
7. That on 27/6/2023 the accused was admitted to KNH. The Court insisted that he be presented physically despite his medical condition and consensus of the prosecution, remand staff and his advocate.
8. That he was presented before Court on a wheel chair .The Court also insisted that he moves from the wheel chair to the dock for the Court to deliver its ruling.
9. That the Court in its Ruling dated 29/6/2023 blamed the accused for delaying the matter since 2015. The Court also issued a final warning to the Accused despite being reeled into Court with a wheel chair from Kenyatta National Hospital.

10. The Accused contends that the Court blamed him for delaying the matter when the prosecution case lasted for 8 years and the accused had only taken the stand less than 1 year ago.

11. The Accused's Counsel also filed the application dated 12/2/2024 for directions and recalling of witnesses in belief that directions had not been taken.

12. That on 14/2/2024 the Court declined to hear the application stating that it was overtaken by events and that a ruling had already delivered.

13. That accused case is that the Court in its earlier ruling stated that the accused did not give reasons for *de novo* proceedings. The new application gives grounds for recalling the 4 prosecution witnesses.

14. Lastly, the Accused contends that the judicial officer the officer has developed bias against him creating reasonable suspicion of bias on the judicial officer.

15. That unless the orders sought in the application are granted, the accused will suffer miscarriage of justice and infringement of his constitutional rights.

SUPPORTING AFFIDAVIT.

1. The application is supported by the affidavit of LEONARD ANYONJE deponed on even date. The grounds of the application are restated on the supporting affidavit.
2. The Accused's Counsel depones that it is necessary to recall the witnesses and to challenge their testimony .He had not seen the earlier Ruling on directions under Section 200 of the Criminal Procedure Code. According to him, the Ruling was not available when he perused the file.
3. That the Court declined to fix the application dated 12/2/2024 for hearing. The reluctantly adjourned the matter on 14/2/2024 after a lot of back and forth.
4. That the Court also disregarded the doctor's letter and found that there was no concrete document to show that the accused had injured himself.
5. The Court also stated that there was no proof from a public hospital that the accused was unable to attend Court and it went ahead to issue warrants of arrest against the accused.

6. That on 27/6/2023 the accused had been at Kenyatta National Hospital where he had been admitted but at the hospital could not be released the doctor's report could not be released to Counsel due to confidentiality. That there was a lot of back and for the between the accused Counsel and the Court on his nonattendance. The prosecutor and remand staff also informed Court that the accused had been admitted and they sought for an order that he had been admitted.
7. Further, the accused Counsel advised Court that the accused had opted to have the pending ruling delivered in his absence . However the Court insisted the accused to be physically presented in Court.
8. That the Court blamed the accused for delaying the case since 2015. However, the case had proceeded smoothly with countable adjournments requested from both sides.
9. The Court also warned the accused that if he absconds his bond would be cancelled despite the accused being wheeled to Court in a wheel chair.

GROUNDS OF OPPOSITION.

1. The prosecution filed the grounds of opposition dated 18/3/2024. The prosecution's case is that the application lacks merit and that it is unsubstantiated.
2. That the applicant has not demonstrated the Respondent's breach of the Accused fundamental rights.
3. That the application is premature and it does not meet the threshold for granting transfer of case to another Court.
4. Particularly that the requirements for granting stay of proceedings as settled by the Court of Appeal in **Perry Mansukh Kansangara & 3 Others -Vs-DPP (2021) eKLR** has not been met.

WRITTEN SUBMISSIONS.

1. The Accused's written submissions are dated 25/5/2025 ,the accused urges that the conduct of the Trial Magistrate eroded the confidence of any fair minded observer .That the accused cannot continue to confidently defend himself before the current trial Court.
2. That the Court's duty to sit and the Court's oath of office should not be forgotten and should only be

considered where there are limited judicial officers who can hear the matter. However where there are other officers, there is no reason for the judge to insist on hearing a matter when a party believes they will not get justice before the Court on reasonable suspicion of bias.

3. That justice calls for reallocation and not imprisoning a litigant to a judicial officer.

   The applicant relies on the case of *Barnaba Kipsongok Tenai v Republic [2014] eKLR citing Jasbir Singh Rai & 3 others -vs- Tarlochan Singh Rai & 4 others (2013) eKLR. and Republic –Vs- Assa Kibagendi Nyakundi [2022] eKLR* where principles of recusal were discussed .

4. That the threshold settled in the listed judicial decisions is that the judicial officer must not view the circumstances through his/her own spectacles but through that of a fair-minded and informed observer.
5. On his application for resummoning and rehearing of witnesses, the accused confirms that the previous Magistrate asked him whether he wished the matter to proceed from where it had reached.

However, he was not asked if he desired any witness to be resummoned for cross examination.

6. In the case of *Mbugua –Vs- Republic (Criminal Appeal 053 of 2021) [2022] KEHC 3037* the court considered similar observations and grounds for recalling witnesses.
7. The accused further submits that the witnesses he seeks to recall and to cross examine are key witnesses and that the previous cross-examination was shallowly done.
8. That he has obtained the services of a new Counsel and in order to prevent miscarriage of justice it is necessary for the 4 witnesses to be re-summoned and reheard.

PROSECUTION SUBMISSION.

9. The prosecution submission are not on record and were not filed on the Court's virtual platforms.

ANALYSIS & DETERMINATION.

10. I have considered the grounds for revision and the accused Counsel affidavit and the prosecution's grounds filed in contest.

Section 362 of the Criminal Procedure Code provides for the revisionary jurisdiction of the High Court providing that :-

"***The High Court may call for and examine the record of any criminal proceedings before any subordinate Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate Court."***

11. The Trial Court record was availed before the Court .The Applicant seeks to impugn orders and proceedings of the Trial Court on **Section 200 (3) of the Criminal Procedure Code** and Ruling delivered on 29/6/2023 .

12. The accused has also referred to proceedings of 14/2/2024 where the Court made observations on the accused application dated 12/2/2024.

13. These orders and proceedings emanate from the subordinate Court and fall within this Court's

jurisdiction under **Section 362 of the Criminal Procedure Code.**

14. The revisionary power is limited to supervision and rectification of procedural and legal infractions. Revision should not be used to micro manage the subordinate Court. Instead, the Trial Court should retain power and discretion over its own proceedings.

15. In **Prosecutor vs Stephen Lesinko [2018] eKLR**, the High Court outlined the limited instances when the Court may exercise its revisionary jurisdiction as follows:-

> ***(a) Where the decision is grossly erroneous;***
> ***(b) Where there is no compliance with the provisions of the law;***
> ***(c)Where the finding of fact affecting the decision is not base don evidence or it is result of misreading or non-reading of evidence on record;***
> ***(d) Where the material evidence on the parties is not considered;*** ***and***
> ***(e) Where the judicial discretion is exercised arbitrarily or perversely if the***

lower Court ignores facts and tries the accused of lesser offence.

16. Further, I note that the current application was filed mid -trial an Interlocutory application pending hearing and determination of the substantive matter.

The issues for determination are framed as :

(a) ***Whether the Trial Court erred in its observations on the application dated 12/2/2024.***

(b) ***Whether the application for recusal and transfer should be granted.***

17. ***Whether the Court erred in its observations on the application dated 12/2/2024.***

On 14/2/2024 , parties attended Court when Mr Anyonje for the accused advised Court that the accused had filed an application under Section 200 (3) of the Criminal Procedure Code.

18. The Court perused the file and found that a similar application had been made with a ruling made on it. The ruling was dated 1/3/2022.That the

new application could not lie as the accused had already testified. The Court was of the view that the main hearing should proceed. The accused did not have witnesses and sought an adjournment. This was finally granted as a last adjournment.

19. From the record , the earlier ruling granted on 1/3/2022 was made following proceedings taken on 17/2/2022. On 17/2/2022 , the accused was represented by Mr Muchiri who sought for ADR and reconciliation with the complainant .

20. The accused in person also addressed Court , he said that he wanted the trial to start *de novo*. At page 81 of the proceedings.

21. The Court (Honourable Ondieki) ruled that the accused must make an application for witnesses to be recalled and also give reasons to justify witness recalling.

That" ***…it cannot be a question of just the accused expressing the wish and the Court becoming a rubber stamp. That the provisions ought to be used sparingly and in cases where the exigencies of the circumstances and not likely to defeat the ends of justice if a succeeding magistrate does not or is not***

allowed to adopt and continue a criminal trial by a predecessor."

This was the holding by the Court of appeal in <u>Ndegwa –Vs- Republic [1985] KLR at 534,</u> where the Court stated that :

> ***"Section 200 is a provision of the law which is to be used very sparingly indeed, and only in cases where exigencies of circumstances, not only are likely but will defeat the end of justice, if a succeeding Magistrate does not, or is not allowed to adopt and continue a criminal trial started by a predecessor or owing to the latter becoming unavailable to complete the trial."***

22. The Trial Court considered the cases of **Ephraim Wanjohi Irungu 7 others –Vs- Republic (2013) EKLR and Joseph Kamau Gichuki –Vs- Republic** where the Courts considered grounds such as whether starting the trial would involve inconvenience and delay, how far the trial proceeded availability of witnesses time lapsed and prejudice suffered.

23. I have considered the accused application filed by Mr. Anyonje who had been newly appointed.

The new application which is subject to revision was brought under the provisions of Section 200(3). Counsel's case is that the grounds for recalling witnesses have been demonstrated in the new application.

24. **Section 200 (3) CPC** provides that :

"Where a succeeding magistrate commences the hearing of proceedings and part of the evidence has been recorded by his predecessor, the accused person may demand that any witness be resummoned and reheard and the succeeding magistrate shall inform the accused person of that right."

25. The Court's earlier ruling delivered on 1/3/2022 was made after the Hon SPM R.K Ondieki had taken over the case from Hon Cheruiyot. The former Magistrate had recorded the prosecution's evidence and made a finding on case to answer.

26. There was no appeal or revision against the ruling delivered on 1/3/2022 by Hon Ondieki, the decision declined *de novo* proceedings. The new application was filed before the same Magistrate and sought prayers for recall under Section 200(3)CPC

27. The Magistrate had already taken directions and proceeded to hear the defence case. The Court was could not sit on review of its own decision under Section 200(3)CPC

28. Further ,Section 200 (4) CPC provides that where the conviction is based on evidence that had not been recorded by the convicting Magistrate, the High Court may set aside the conviction if there was material prejudice suffered by the accused.

Section 200 (4) CPC provides that:

> ***"Where an accused person is convicted upon evidence that was not wholly recorded by the convicting magistrate, the High Court may, if it is of the opinion that the accused person was materially prejudiced thereby, set aside the conviction and may order a new trial."***

29. The parties' grievance under the provision can be addressed on appeal.The decision to allow recall and re-examination of witnesses is discretionary. The orders are aimed at facilitating the accused right to fair trial and are issued on a case to case basis, depending on the circumstances of the case.

30. No case is similar and I find that in this case , the accused was represented by Counsel Mr. Muchiri during the trial and directions were taken in the presence of Counsel . The new application on grounds that the accused has appointed new Counsel.

31. The purpose of Section 200 (3) CPC is clear and its application is restricted to situations where a new Magistrate takes over the case. The provision does not relate to appointment of new Counsel. The Court is also restricted in application of the statutory provision.

32. On the other hand, although there is no specific provision to allow recall when new Counsel is appointed, such prayers can be considered during trial where it is important for the just determination of the case.

In ***Joseph Ndungu Kagiri -Vs- Republic*** **(2016) eKLR, Justice Mativo (as he then was) observed that there must be a good reason and it must be necessary to meet the ends of justice.**

The Court held as follows: "The question that arises is whether the further cross-examination was a good reason or whether it was necessary for the ends of justice. Counsel had just come on record, he had just been supplied with the proceedings and prosecution witnesses' statements and the accused persons had hitherto been unrepresented and did not have the benefit of the witnesses' statements at the time the trial proceeded nor did they have the benefit of legal representation. Counsel, in his wisdom deemed it fit to apply to cross-examine the said witnesses and the Court overruled this application."

33. Section 150 of the CPC and Section 146 of the Evidence also refer to the Court's discretionary power to recall and /or summon witnesses to testify .

Section 146 of the Evidence Act provides that :

> "***The Court may in all cases permit a witness to be recalled either for further examination-in chief or for further cross-***

examination, and if it does so, the parties have the right of further cross-examination and re- examination respectively."

34. The Court can act on its own motion , it can also be moved by parties. The Court must be persuaded that the evidence is necessary to establish the truth.That is not apparent in the instant proceedings. I find that the accused Counsel had not demonstrated reasons for recall of the listed witnesses , the witnesses had been competently cross examined by the former Counsel and directions were taken when Hon Ondieki took over the matter.

35. Further, the fact that a new Magistrate did not see and hear the witnesses is not sufficient to apply and be granted recall of witness or start the case denovo it depends on circumstance of each case as presented before the Trial Court . I find no bias or prejudice caused by Trial Court. There is also right of appeal and that provisions of Section 200(4) require that the trial proceeds and the prejudiced, evidence, conviction and sentence be assessed on appeal.

36. Lastly, the right to recall and cross examine witnesses depends on the age of the case,

availability of witnesses and chances real likelihood of lapse of memory among other considerations of the specific case.

In **Joseph Kamora Maro -Vs-. Republic [2014] KECA 66 (KLR)**, the Court of Appeal Okwengu ,Makhandia ,Sichale JJA in Malindi held that:

> "***The position in law is that a trial Magistrate taking over a case that is partly heard is mandatorily obligated to inform an accused person of his right to recall witnesses. After an accused person has been informed of his right, he/she may elect to have the witnesses recalled. What happens thereafter is for the Court to decide depending on the availability of witnesses, the length the trial has taken, because if it has taken too long, chances are that some witnesses may have left the jurisdiction of the Court as was the case here or some may even have died. To this extent we are in agreement with the learned Judges of the High Court that "this provision does not oblige the succeeding magistrate to start de novo" but what is mandatory is to inform an accused of his right under section 200 (3) of the Criminal Procedure Code***."

37. In this case the witnesses testified in 2015 while the application for recall was made after 8 years. The trial had to be expedited and in this case no prejudice or justiciable case for recall was demonstrated. I find that the trial Court did not commit procedural error or illegality on its orders dated 17/2/2024 disregarding the accused second application under Section 200(3). CPC more so, the Ruling by previous Magistrate on case to answer was/is valid court order by a Court of competent, concurrent, similar and equal jurisdiction to the succeeding Magistrate and could not be set aside by succeeding Magistrate.

Whether the application for recusal and transfer should be granted.

38. I have gone through the Trial Court record on recusal and transfer applications that were lodged against the Trial Magistrate or the chief magistrate

who can exercise similar power against other subordinate Courts.

I note that after accused application was declined on 17/2/2024 a hearing date was given for 26/2/2024. This revision was filed immediately and this Court stayed proceedings was 22/2/2025.

Several dates have been taken before the Trial Magistrate with the last mention taken on 28/4/2025 .The accused did not intimate his desire to have the case reallocated to another Court or express his fears of bias . That is also apparent in all proceedings taken before Hon. R.K Ondieki SPM.

39. The accused urges that there is apprehension of bias and that "*it is impossible for the trial magistrate to view the accused as innocent*."

The principle across the board in recusal is that all Courts and judicial officers' duty is to hear and determine cases to its finality. That mandate is in discharge of their duty to the

public and fidelity of the Constitution requiring professional, impartial and just determination of cases. The decision to recuse or withdraw from a case must be justified and taken as a last resort.

40. In the case of **Galaxy Paints Company Limited –Vs- Falcon Guards Limited [1999] KECA 136 (KLR),** the Court of Appeal explained that : "***Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour"***. See also **Raybos Australia Property Limited & another v. Tectram Cooperation Property Ltd. & Others 6 NSWLR ."**

41. In R vs Gough[1993] 2 All E. R 724, [1993] AC 646 cited by the Supreme Court in Rai & 3 others v

Rai & 4 others [2013] KESC 20 (KLR) , Lord Goff of Chieveley observed that:“

> [T]***he nature of the interest is such that public confidence in the administration of justice requires that the judge must withdraw from the case or, if he fails to disclose his interest and sits in judgment upon it, the decision cannot stand. It is no answer for the judge to say that he is in fact impartial and that he will abide by his judicial oath. The purpose of the disqualification is to preserve the administration of justice from any suspicion of the impartiality.”***

42. **Jasbir Singh Rai & 3 Others v. Tarlochan Singh Rai & 4 Others [2013] eKLR** gave the policy rationale and objective of the rule of recusal in these words:

> ***“…….Perception of fairness, of conviction, of moral authority to hear the matter, is the proper test of whether or not the non-participation of the judicial officer is called for. The object in view, in the recusal of a judicial officer, is that justice as between the parties be uncompromised; that the due process of law be realized, and be seen to have had its role; that the profile of the rule of law in the matter in question, be seen to have remained uncompromised.”***

43. The **Judicial Service [code of standards and ethics] Regulations of 2020** lists circumstances and or grounds of recusal as follows; " Regulation 21 provides that :

(1) A judge may recuse himself or herself in any proceedings in which his or her impartiality might reasonably be questioned where the judge—

a) is a party to the proceedings;
b) was or is a material witness in the matter in controversy;
c) has personal knowledge of disputed evidentiary facts concerning the proceedings;
d) has actual bias or prejudice concerning a party;
e) has a personal interest or is in a relationship with a person who has a personal interest in the outcome of the matter;

44. The judiciary code of conduct clarifies that the decision to recuse oneself is to be taken by the judge or judicial officer in conduct of the matter. The grounds for consideration or concern must be raised before the judicial officer for close re-examination of his/her

conduct and stake in the matter. The High Court warned against escalating such application to the High Court .In the case of Murunga v Republic of Kenya [2025] KEHC 16745 (KLR) The High Court at Busia held that:

> ***"The recusal or disqualification, of a presiding judicial officer, can only be sought before the presiding judicial officer himself. It is not a matter to be considered by another judicial officer, or even a higher judicial officer. Courts do not engage in gossip. The person, seeking the recusal, should be brave enough, to confront the presiding judicial officer, against whom the recusal is sought, albeit in a respectful manner, with the allegations, and should be bold enough to ask him to let go of the matter. In any case, that presiding judicial officer is entitled to hear and to be heard, with respect to the allegations being made against him, before he can make a decision, on whether to get out of the matter."***

At Para 18 the Court stated that :

"***The High Court would have no jurisdiction, to take out of the hands of the trial magistrate, a matter that he is seized of, without just cause, or a case being made out for it, and, more importantly, before that magistrate has been given an opportunity to inquire into the matter, by way of determining a recusal application placed before him. The High Court cannot pull the matter away from the hands of the trial magistrate, in the guise of its transfer, unless proper grounds for transfer are established.***"

45. **In Joseph Odhiambo Omondi –Vs- Republic [2017] KEHC 235 (KLR)** Hon. Mrima J held that "…***By looking at the conduct of the Applicant in the criminal case and before this Court, it is clear that the Applicant is not taking the case seriously. Applications in the nature of recusal of a Court must not be taken lightly.*** Such an application must be made before ***the presiding Court in the first instance. Even before a party rushes to complain before the High Court that a trial Court ought to recuse itself or that no documents were offered, there must at least be an effort to raise such matters first with the trial Court. That Court is bound by and is always called upon to uphold the Constitution and must deal with the issue once raised***."

46. The Court of Appeal in **CAPITAL MARKETS AUTHORITY vs ALNASHIR POPAT & 8 OTHERS [2019] eKLR** considered the test for impartiality or apprehension of bias relying on the cases of;**KAPLANA H. RAWAL vs JSC & 2 OTHERS** thus;

> ***It cannot be gainsaid that the Applicant bears the duty of establishing the facts upon which an inference is to be drawn that a fair minded and informed observer will conclude that the judge is biased. <u>It is not enough to just make a bare allegation. Reasonable Grounds must be presented from which an inference maybe drawn.</u>***

The accused had done it earlier before Honourable Cheruiyot who delivered his ruling on 29/9/2021. That is the Ruling that must be subject of revision or appeal in the High Court and not recusal of succeeding Magistrate where the application was not made first before the Trial Court.

47. In **Mumias Sugar Co Ltd vs Director Of Public Prosecutions & 2 Others (2012) eKLR ;**Bias was defined as: inclination ; prejudice**;** Prejudice was defined

as: preconceived judgment formed without factual basis; strong bias;

The Court in **R vs David Makali & Others CA Criminal Application No 4 & 5 of 1995** went on and considered;

> ***I take the view that the Petitioner should establish such material facts as attend personal inclination or prejudice on the part of the judge towards a party on some extrajudicial reasons....The Applicant must therefore specifically set out facts constituting bias and prove them as such in order to establish real likelihood of bias for purposes of disqualification of the judge…….it is absolutely necessary that the party applying should lay all relevant material before Court. The best way of delivering that requirement is by adopting a method that inherently enables some form of deposition and production of evidence.I find that there is no order or proceeding before Honourable R.K Ondieki on his recusal and there the application cannot be subjected to revision proceedings .***

48. The above case-law all speak to the objective criteria of conduct of judicial proceedings that fall short of fair hearing, access to justice and upholding rule of law by all

parties to the proceedings including the judicial officer. If any shortcoming or discrepancy arises, the recusal application is first presented and heard before the Trial Court. If parties are aggrieved then they move the next Court in hierarchy of Courts, High Court then to Court of Appeal.

49. The Accused in the instant case sought recusal of previous Trial Magistrate who delivered Ruling on 29/9/2021. With the Present Trial Court the recusal application was not presented instead the Applicant sought stay of proceedings in the High Court and was granted but the application for recusal was first presented in the High Court. The applicant also seeks transfer of the case to another Magistrate. I note that the High Court has power to transfer cases from the Magistrate Court under **Section 81 (1) CPC** It can be transferred to itself to hearing or to another subordinate with jurisdiction.

50. Separate from claims of bias brought prematurely before this Court, applicant also listed several incidences before the Trial Court as grounds for transfer. These

incidences and parties conduct must be interrogated with the Trial Court record.

THE PROCEEDINGS BEFORE THE TRIAL COURT

51. The matter commenced on 12/1/2015 when the accused was arraigned for plea. He was charged with 7 counts. Pw1 testified on 25/11/2015. The prosecution case was closed on 28/1/2019 and the ruling on case to answer delivered on 29/5/2019. Directions were taken when the accused stated he would give sworn evidence and call 3 witnesses.

52. Several dates were given and the accused later filed the application for recusal. Warrants of arrests were issued on 2/11/2021 against him and the warrants were lifted on 30/11/2021.

53. On 17/2/2022 the accused Counsel said that the accused was unwell and that they had a medical report. The Court directed that he goes for medical opinion at

KNH and the report ought to be confidentially filed by 23/6/2022. The report from KNH is not on record. On 23/6/2022 Counsel said that he had a sick sheet and the Court indulged the accused.

54. On 4/7/22 the Court was told that he was undergoing medication at Lions Eye clinic and that he has issues with his eyes .His Counsel Mr Muchiri said that the case involved a lot of documents. The Court gave the accused the final mention on 5/8/2022.

55. On 15/6/2023, the accused sent Mr. Titus Mwangi Gathumbi who told Court that the accused injured himself .The Court found that there was no concrete documents to show that the accused had injured himself no medical chits or proof from a public hospital. Warrants of arrest were issued

56. On 16/5/2023, his Counsel was unwell and the hearing was adjourned to 31/5/2023. On that 31/5/2023

Mr. Titus Mwangi Gathumbi told Court that he had fallen off the stairs and was taken to hospital. The case was adjourned to 15/6/2023.On 27/6/2023 the Court was told that the accused had been admitted at KNH, the Court ordered that the remand staff avail documents from the hospital. There is no medical record indicating that the accused was on a wheel chair during the Court proceedings. The record does not indicate that the accused was compelled to attend Court in the wheel chair and take to the stand.

57. Ruling was delivered on 29/6/2023, the record indicates that the accused and the prosecution Counsel were present. The attendance of the accused is not recorded and Counsel's claims that the accused opted for the ruling to be read in his absence is not on record. In the impunged ruling, the Trial Magistrate narrated the true events of the entire trial from plea taking to the defence case when he took over the case. The Court found that the defence case was in a state of coma until 25/4/2023 when the accused testified. That the accused had not attended Court and that there was no proof of recommended bed rest.

58. The Court took the view that he had developed a habit of absconding Court processes and demonstrated that he had no regard to Court processes. I find no fault or legal or procedural alleged infractions in these statements coming from the Trial Magistrate who was in conduct of the case and the court Proceedings on record. As said, the revision of proceedings are not meant to micro manage or fetter the Trial Court's role. The Trial Court is always in full control of its proceedings and may take necessary steps for expeditious determination of the trial while ensuring Fair Trial provided under Article 50 of Constitution

59. In this case, the trial had been in Court for 8years.The prosecution case was heard progressively from 2015, however the defence case commenced in 2019 and the accused testified after 3 years. From the record, it is clear that he was given several adjournments and was indulged at different times when the Court considered submissions and medical sheet availed before it. The Trial Court should and upholds all parties' rights to ensure fair trial access to justice and upholding the rule of law. However, the totality of the case is that the accused trial had overstayed in Court and necessary

steps had to be taken to ensure expeditious and just determination of the case. This Court finds no illegality, impropriety or incorrectness to warrant revision.

DISPOSITION

60. In the upshot, I find that the application is unmerited and is dismissed.

The application is overtaken by events as this Court judicially noticed that the Trial Court Hon R.K.Ondiek SPM is now officially nominee for appointment as Environment & Land Court Judge.

The file shall be placed before the Chief Magistrate Milimani. Application under Section 200 CPC may be made and considered on merit within the prevailing circumstances of the case and for expeditious and final disposal. The case to be heard to its logical conclusion.

DELIVERED DATED SIGNED IN OPEN COURT IN HIGH COURT CRIMINAL DIVISION AT NAIROBI THIS 16/4/2026

M.W.MUIGAI

JUDGE