



**Ndavi v Republic (Miscellaneous Criminal Application E173 of 2024)
[2025] KEHC 2564 (KLR) (Crim) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2564 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E173 OF 2024
K KIMONDO, J
FEBRUARY 27, 2025**

BETWEEN

WILLIAM NDAVI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant seeks to set aside or vary the order issued on 22nd May 2024 in Nairobi Chief Magistrates Court Miscellaneous Application Number 1822 of 2024, Republic v William Ndavi (hereafter the criminal case or lower court matter).
2. The notice of motion is dated 5th June 2024 and predicated on a deposition of even date as well as a further affidavit sworn on 13th December 2024.
3. The impugned order granted a search and seizure warrant to Police Constable Noah Makokha, an officer attached to the Directorate of Criminal Investigations at Nairobi (hereafter the investigator), to enter the office and home of the applicant, and if found, to seize mobile phones, laptops and desktop for forensic analysis.
4. According to the affidavit presented to the lower court, the police were investigating publication of false information or cyber harassment contrary to sections 23 and 27 (1) (a) & (b) of the [Computer Misuse and Cybercrimes Act](#) 2018 (hereafter the Act).
5. But according to the applicant, there was no plausible evidence to justify the grant of the warrant; that he was never summoned by the police over such investigations; and, that if there ever was a complaint, it was tainted with malice or material non-disclosures.



6. The motion is fervently opposed by the Director of Public Prosecutions (hereafter the DPP) through a replying affidavit sworn by Police Constable Mercy Nyingi on 8th October 2024.
7. The pith of the objection is that a complaint was lodged by Olive Mugenda, the then chair of the board of Kenyatta University Teaching and Referral Hospital (hereafter the hospital), and where the applicant also held a senior position. There would seem to be further statements recorded from Dr. Kerama Onyimbo, Dr. Frank Mwangera and Isaac Kamau.
8. She avers that the complaint centered around a document “circulating online...malicious, false and defamatory against the staff, members of the board and the hospital”. The respondent deposes that the order was executed on 28th May 2024 and the police seized the applicant’s Samsung Galaxy A24 cell phone and a laptop HP Pro Book 430 G4. The equipment was submitted to the Communication Authority Forensic Laboratory and printouts extracted. A copy is attached to the replying affidavit.
9. In the further affidavit, the applicant counters that this is the first time he has heard of the complaint to the police; that the materials were not before the lower court when it issued the warrant; and, that the entire complaint is a stratagem to stifle some industrial action by the Kenya Medical Practitioners Pharmacists and Dentists Union where he is “a vocal leader”.
10. The applicant further relied on submissions and a list of authorities dated 13th December 2024.
11. On 23rd January 2025, I heard additional arguments from the learned counsel for the applicant and the DPP.
12. I take the following view of the matter. Article 165 (6) of the Constitution confers the High Court with supervisory jurisdiction over all subordinate courts. Furthermore, and, by dint of sections 362 to 364 of the Criminal Procedure Code, the High Court is imbued with wide powers to review the impugned proceedings in the lower court.
13. From the replying affidavit, an active criminal investigation is ongoing. There is an allegation at paragraph 7 that the applicant was summoned to appear before the investigator and has been re-summoned. Like I stated, the applicant denies receipt of any such summons. In addition, it is conceded that the warrant was executed and the equipment above seized. No charges have been preferred against the applicant at this stage.
14. Granted those circumstances, it would be prejudicial to delve into the merits of the claims by the police. However, from the materials attached to the application dated 22nd May 2024 made by the investigator to the lower court, he deposed at paragraph 13 that “the intelligence in possession of the applicant shows that William Ndavi authored and circulated the said malicious information either from his mobile phones, laptop or desktop computers”.
15. The additional materials or basis for the warrant now presented in the replying affidavit of P.C. Mercy Nyingi were not before the lower court. I thus readily find that the warrant was issued on scanty averments by P.C. Noah Makokha at the time that the applicant “authored and circulated the said malicious information either from his mobile phones, laptop or desktop computers”.
16. So much so that the wide ranging ex-parte order for search and seizure of the applicant’s office and residence was made without sufficient factual basis. I say so very carefully and without making a final finding. The warrant must also be looked at through the lenses of the right to privacy enshrined in Article 31 of the Constitution. I accordingly set aside the entire order issued by the lower court on May 22, 2024.

It is so ordered.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF FEBRUARY 2025.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of-

Mr. Rao holding brief for Ojiambo SC for the applicant instructed by Kaplan & Stratton Advocates.

Ms. Kigira holding brief for Ms. Awino for the respondent instructed by the Office of the Director of Public Prosecutions.

Mr. Edwin Ombuna, Court Assistant.

