



**Republic v Directorate of Criminal Investigations & 3 others; David Crispo Weru (Exparte Applicant) (Judicial Review Application E079 of 2023) [2024] KEHC 3314 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3314 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
JUDICIAL REVIEW APPLICATION E079 OF 2023  
RM MWONGO, J  
MARCH 20, 2024**

**FORMERLY HIGH COURT JUDICIAL REVIEW MISC. CASE NO. E079 OF 2023 FILED IN THE HIGH COURT AT NAIROBI, MILIMANI LAW COURTS**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE DIRECTORATE OF CRIMINAL INVESTIGATIONS .... 1<sup>ST</sup> RESPONDENT**

**THE DIRECTOR OF PUBLIC PROSECUTIONS ..... 2<sup>ND</sup> RESPONDENT**

**THE CHIEF MAGISTRATE COURT KERUGOYA ..... 3<sup>RD</sup> RESPONDENT**

**OFFICE OF THE ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**DAVID CRISPO WERU ..... EXPARTE APPLICANT**

**RULING**

1. The Application by the Ex Parte applicant seeks, *inter alia*, the following orders:
  - a. An order of certiorari to remove into this Honourable Court and quash the orders of 21<sup>st</sup> June, 2023 issued by Hon. Alex Ithuku to proceed with the hearing in MCCR/E411/2023 Republic-V-David Crispo Weru & Another and the subsequent proceedings in court.
  - b. An order of prohibition do issue prohibiting the Respondents herein, or any person acting under the authority, behest or directions from further prosecution of the ex-parte applicant in Kerugoya Chief Magistrates Criminal case No. MCCR/E411/2023 Republic-V-David Crispo Weru Another.



2. The application is based on the following grounds:
  1. The applicant is a male adult of sound mind aged 83 years and a Shareholder of Kerugoya Service Station Limited and is charged with the offence of stealing by directors contrary to section 282 of the [Penal code](#) in MCCR/E411 of 2022 at Kerugoya Law courts.
  2. On the 21<sup>st</sup> June 2023, Applicant produced a medical report from Kirinyaga County Referral Hospital which reported that he suffered from severe visual impairment and moderately severe Sensorineural hearing loss which were likely to inhibit his performance at trial.
  3. The 3<sup>rd</sup> Respondent in discharge of its duty noted that the Applicant had underlying conditions that were likely to inhibit the Applicants right to fair trial but nevertheless directed that the case proceeds for hearing on the same day.
  4. The prosecution confirmed to court that it was ready to proceed and indicated it would be availing further documents even though on 26<sup>th</sup> October, 2022 it had confirmed that it would be relying only on Equity Bank Statements, KCB Bank statements and a Log book.
  5. The prosecution proceeded to call one witness to testify and after the hearing availed a huge bundle of documents to the Applicant.
  6. The Respondents decision to disregard the Ex-parte Applicant's age-related ill health which would have an impact on his ability to be afforded a fair trial is contrary to the rules of natural justice and a violation of the Applicant's constitutionally guaranteed rights.
  7. The actions by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were illegal in that they failed to advance the sole purpose of article 50(2)(i) of [the Constitution](#) of Kenya 2010 which is to avail the accused person sufficient time and facilities to enable him prepare his defence and challenge the prosecution's evidence at the opportune time both in cross-examination and in his defence.
  8. The applicant was given a period of less than 7 days to examine the bundle availed by the 2<sup>nd</sup> Respondent and proceed with the hearing on 6<sup>th</sup> September 2023 which was inadequate time and facility for the Applicant to prepare a defence.
3. The 3<sup>rd</sup> and 4<sup>th</sup> respondents oppose the application. They filed their grounds which are as follows that:
  1. The application is intended to curtail the statutory obligations and duties of the 3<sup>rd</sup> Respondents herein.
  2. The application is inviting this court to trespass into the arena specifically reserved for the criminal trial process and ought not usurp the constitutional or statutory mandate of the 3<sup>rd</sup> Respondent.
  3. The charges in Kerugoya Chief Magistrates Criminal Case No. MCCR/E411/2023 Republic-V-David Crispo Weru Another were brought without any ulterior motive nor is there any impropriety on the part of the 3<sup>rd</sup> Respondent.
  4. The Respondent's decision to avail a huge bundle of documents which the Ex-parte applicant could not examine due to his vulnerability at the point of the hearing and directing that the case proceeds for hearing on 28<sup>th</sup> June 2023 was greatly prejudicial to the ex-parte applicant.
  5. The Applicant's case is that the Respondents arrived at the decision to proceed with the hearing whilst a medical report attached to page 23 of the verifying affidavit dated 17<sup>th</sup> July, 2023 had been presented to court. He argues that ignoring the medical report was illegal and lacked



procedural propriety. In this the respondent's showed they were divorced from the goals of Article 47 and 50 of *the Constitution* of Kenya 2010 by failing to avail the ex-parte applicant an opportunity to be heard on his representations before court.

6. The Respondent's decision to avail a huge bundle of documents which the Ex-parte applicant could not examine due to his vulnerability at the point of the hearing and directing that the case proceeds for hearing on 28th June 2023 was greatly prejudicial to the ex-parte applicant.
  7. My understanding of the applicant's complaint is as follows:
  8. The applicant was arrested on 23.09.2022 and charged on 26.9.22 jointly with others not before the court with stealing cash and motor vehicle all valued at Kshs.17,2020,685.35 being the property of Kerugoya Service Station Limited.
  9. When he was arraigned in court on 27.9.2022 he pleaded not guilty. At the hearing on 21.6.2023, the defence counsel stated that the applicant could not follow the proceedings. Doing the best I can to read the hand written proceedings of the lower court, I note that the trial magistrate proceeded with the hearing and took the evidence of PW1 Emmanuel Gichai.
  10. Prior to that on 24.5.2023 the trial magistrate had ruled that the applicant be referred for medical check up to ascertain whether he is fit to stand trial, and the hearing date was fixed.
  11. From the Lower Court file, it is clear that a medical report dated 20 June 2023 was filed on 21<sup>st</sup> June 2023. This is the report by a Audiology Specialist from the Kirinyaga County Government Hospital. The report indicates:

“Physical examination including tests for vision reveal that visual impairment (severe). Tests for hearing done on 19<sup>th</sup> January 2023 reveal that he had diminished hearing which is ranked as moderately severe sensorineural hearing loss. (see attached).

The two findings are likely to inhibit effective performance in court. (Emphasis added)
  12. Attached to that report and filed on the same date in the lower court is a letter dated 24.01.20, it concludes that the applicant has:

“Severe visual impairment secondary to mature cataract both eyes. Moderate diabetic retinopathy”.
  13. The trial court did not engage the parties on these reports nor did it take evidence if the makers so as to clarify the true circumstances of the accused's ailment.
  14. It appears to me that the present application cannot be properly and judiciously be determined unless the court is enabled to fully understand the extent and scope of the applicant's medical ailments as stated. This could easily have been done by the lower court.
4. Accordingly, and in the interest of expedition, I direct that the doctors who made the auditory report and ophthalmic report do appear in court within the next 60 days to testify on to the true condition of the applicant.
  5. The two doctors may be cross-examined by the parties and the court may also ask any questions it deems it necessary.



6. Orders accordingly.

**DATED AT KERUGOYA THIS 20<sup>TH</sup> DAY OF MARCH, 2024**

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**R. MWONGO**

**JUDGE**

Delivered in the presence of:

1. Kariuki - for 3<sup>rd</sup> & 4<sup>th</sup> Respondents
2. No representation - DPP
3. No representation David Crispo Weru Applicant
4. No representation Wangechi for Applicant

