



Chelule v Director of Public Prosecutions Nakuru & another (Miscellaneous Criminal Application E034 of 2024) [2024] KEHC 2608 (KLR) (15 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2608 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CRIMINAL APPLICATION E034 OF 2024**

**PN GICHOHI, J
MARCH 15, 2024**

BETWEEN

SAMUEL KIPNGENO CHELULE APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS NAKURU 1ST RESPONDENT

OFFICER IN CHARGE NAKURU PRISON 2ND RESPONDENT

RULING

1. Under a certificate of urgency and through the firm of Bore , Malinga & Co. Advocates, the Applicant herein Samuel Kipngeno Chelule moved this Court by a Notice of Motion dated 11th March ,2024 and filed on 13th March, 2024 under Article 28, 44(3) and 51 of the Constitution of Kenya seeking orders that:-
 1. Spent
 2. The Court does order the Officer in charge Nakuru GK Prison to produce and escort the Applicant to herein to Kaplamai Sublocation in Kuresoi South for purposes of attending the funeral of his father namely Joseph Kipkurgat Arap Kosgey on Saturday 16th March 2024 and thereafter be escorted back to Nakuru GK Prison to continue serving the sentence herein.
 3. The travelling costs and expenses for both the Applicant and the officers escorting the him to the funeral shall be borne by his brother Richard Kurgat.
 4. The costs of this application be borne by the Applicant.
2. The grounds are on the face of the application supported by the Affidavit sworn by Robert Kurgat on 11th March 2024.



3. When this matter was placed before this Court yesterday, the Court ordered that the Respondents be served for directions today 15th March 2024 at 9.00 am.
4. When the Parties appeared, none of the Respondents had filed any response. Mr. Bore for the Applicant was ready to proceed as he had served the parties.
5. However, Mr Kihara for the 1st Respondent urged the Court to grant him Seven (7) days to file a response.
6. Due to the urgency of the matter, SSP Richard Kiprono Kosgey who is based at Nakuru Prison as in charge of Discipline, Standards and Compliance attended Court . He informed this Court of the challenges he is now facing.
7. He submitted that he had just been served with the Application at 10.00 am today and in as much as he wished to comply if orders are issued herein and in accordance with the recent Court's Ruling allowing prisoners serving sentence, and the accused persons in custody on pre-trial, be escorted to attend such funerals, he was unable to do so for reasons that :-
 1. He was supposed to conduct a prior ground risk assessment, liaise with the Probation Department and to get views of the victim and the family.
 2. The funeral was intended to take place tomorrow which is too soon and therefore , they were unable to organise for security and transport for the Applicant and the escort.
 3. He had deployed One Hundred and twenty (120) Officers this morning to provide security for slated for tomorrow (Saturday), Sunday and part of Monday during the crusade by Prophet Awuor intended to be attended by several dignitaries from all over the world.
 4. He was also to sit down with the family on expected costs calculations even though the family had offer to meet it but he has no offers available to do so in the circumstances herein.
 5. He had contacted the Ministry of Interior and Correctional Services and has been notified that they are in the process of formulating the Policy to comply with the Court's directives that compliance be withing Six (6) Months.
8. In the circumstances, he urged the Court to allow the Prisons organise for the Applicant to attend the funeral virtually while in prison.
9. Having heard the responses herein , Mr. Bore appreciated the efforts made by this Court and the Respondents to have the Application heard even under those difficult circumstances. He therefore urged that the Application be marked as overtaken by events there the circumstances, the parties agreed that the Application be marked as overtaken by events in the circumstances.
10. Counsel however welcomed the offer by SSP Richard Kiprono in regard to virtual funeral attendance by the Applicant. The Respondents agreed to that request and turn of events.
11. Due to the challenges encountered and the fact that the burial is scheduled for tomorrow, it would not be practicable for the Application to be responded, argued fully and the Court delivers its considered ruling as this matter would be already overtaken by events as noted by the parties.
12. In the circumstances, this Court makes the following orders:-
 1. By consent of parties, the Application dated 11th March 2024 and filed on 13th March 2024 be and his hereby marked at this stage as overtaken by events.



2. Arrangements be made for the Applicant to attend the funeral virtually while in prison as offered by the in-charge Discipline, Standards and Compliance Nakuru Prison.
3. No orders as to costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 15TH DAY OF MARCH , 2024.

PATRICIA GICHOHI

JUDGE

In the presence of:

Mr. Bore for the Applicant

Mr. Kihara for 1st Respondent

2nd Respondent

Miruka, Court Assistant

