



**Mohamed v Chief Magistrate Wanguru Law Courts & another;
Kinywa & another (Interested Parties) (Judicial Review Application
E009 of 2024) [2024] KEHC 16628 (KLR) (30 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16628 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
JUDICIAL REVIEW APPLICATION E009 OF 2024**

DKN MAGARE, J

DECEMBER 30, 2024

**IN THE MATTER OF: ARTICLES 22; 23; 24; 27; 28; 47; 48;
157(11); 159; 258 AND 259 OF THE CONSTITUTION OF
KENYA**

**IN THE MATTER OF: SECTIONS 4; 7; 8; 10; AND 11 THE
FAIR ADMINISTRATIVE ACTIONS ACT;**

BETWEEN

ISSADIN GABANE MOHAMED APPLICANT

AND

CHIEF MAGISTRATE WANGURU LAW COURTS 1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION 2ND RESPONDENT

AND

JAQUELINE CHRISTY AKINYI KINYWA INTERESTED PARTY

LEAH NJERI NJIRU INTERESTED PARTY

RULING

1. The Applicant sought the following orders.
 - a. That this application be certified urgent and be heard ex-parte in the first instance for the reasons of urgency set out in the Certificate of Urgency.
 - b. That the Applicant be granted leave to apply for an order of Certiorari to move into this Court for purposes of being quashed, the decision of the 2nd Respondent to charge the Applicant with



the charge of Conspiracy to Defraud contrary to Section 317 of the Penal Code and Obtaining Money by False Pretenses contrary to Section 313 of the Penal Code.

- c. That the Applicant be granted leave to apply for an order of Prohibition against the 1st & 2nd Respondents from proceeding with the charging and/or hearing and determination and/or prosecuting the ex-parte Applicant herein with the Charge of Conspiracy to Defraud Contrary to Section 317 of the Penal Code and Obtaining Money by False Pretenses contrary to Section 313 of the Penal Code and/or taking any further actions that will adversely affect the rights and fundamental freedoms of the Applicant.
 - d. That the grant of leave to operate as a stay of the proceedings scheduled to commence on the 11th December, 2024 including but not limited to the Applicant taking plea before the 1st Respondent pending the hearing and determination of this application and the substantive Judicial Review Application.
 - e. That the Honourable Court be pleased to grant such other or further relief as it may deem fit in the circumstances.
 - f. That the cost of this application be borne by the Respondents.
2. The 2nd Respondent, who is the substantive respondent conceded the application. The interested parties opposed the application. The place of interested parties in law is settled. I do not gainsay the same. In the case of *Methodist Church in Kenya v Fugicha & 3 others (Petition 16 of 2016)* [2019] KESC 59 (KLR) (23 January 2019) (Judgment) eKLR Neutral citation: [2019] KESC 59 (KLR), the Supreme Court stated as follows:

This court, in *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others*, Petition No 12 of 2013 [2014] eKLR, thus observed of interveners, or interested parties: (14) Black's Law Dictionary, 9th Edition, defines 'intervener' (at page 897) thus:

One who voluntarily enters a pending lawsuit because of a personal stake in it'; [and defines 'interested party' (at p 1232) thus:] 'A party who has a recognizable stake (and therefore standing) in a matter....'

18. Consequently, an interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause..." 43. 44. 45. 46. 47. 48. 49. It thus emerges quite plainly that the High Court can join interested parties to proceedings, where necessary. That is why In *Meme v Republic* [2004] 1 EA 124; [2004] 1 KLR 637, the High Court observed that a party could be enjoined in a matter on the basis of certain considerations viz: (i) joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings; (ii) (iii) joinder to provide protection for the rights of a party who would



otherwise be adversely affected in law; joinder to prevent a likely course of proliferated litigation.”

3. The role of a complainant is equally circumscribed. The Supreme Court, in *Joseph Lendrix Waswa v Republic* (2020) eKLR, settled the place of a complainant or victims. They stated as doth:

“We are of the view that the victim has no active role in the decision to prosecute, or the determination of the charge upon which the accused will finally be tried. This is the sole duty of the DPP. While the victim of a crime can participate at any stage of the proceedings as deemed appropriate by the trial Judge, a victim or his legal representative does not have the mandate to prosecute crimes on behalf of the DPP. The DPP must at all times retain control of, and supervision over the prosecution of the case. As such, the constitutional and statutory powers of the DPP to conduct the prosecution is not affected by the intervention of the victim in the process. Additionally, a victim cannot and does not wear the hat of a secondary prosecutor. When victims present their views and concerns in accord with section 9(2) (a) of the VPA, victims are assisting the trial Judge to obtain a clear picture of what happened (to them) and how they suffered, which the Judge may decide to take into account.”

4. There are proceedings already undertaken in Milimani Criminal Case Number E766 of 2022. There is also a civil matter, being High Court Civil Case No. E093 of 2022. Milimani CMCR. E766 of 2022 was pending. Apparently the 2nd Interested Party lodged a complaint against the 1st Interested Party which culminated into Wanguru Law Courts Criminal Case No.E758 of 2023, with the 1st Interested Party as an accused.
5. It is stated that charges had been in another criminal case, which resulted in attempts to arrest the Applicant while he was attending Criminal Case Number E766 of 2022. This was thwarted through an anticipatory bail issued by the High Court sitting in Kibera.
6. A case was subsequently filed, being Wanguru Criminal Case Number E752 of 2024 against the Applicant. The subject matter is said to be similar. This was conceded by the state. In the circumstances, grounds have been raised to certify grant of leave. The next question is whether leave should act as stay. The respondents have written lengthy responses. They relate to the merit or otherwise of the case. I shall not go into them. This is necessary to avoid the making of conclusions of fact at this stage.
7. I therefore make the following orders:
- a. Leave is hereby granted to the ex parte Applicant to apply for an order of Certiorari to move into this Court for purposes of being quashed, the decision of the 2nd Respondent to charge the Applicant with the charge of Conspiracy to Defraud Contrary to Section 317 of the Penal Code and Obtaining Money by False Pretenses Contrary to Section 313 of the Penal Code in respect of Wanguru Criminal Case Number E752 of 2024.
 - b. Leave is granted to the ex parte Applicant to apply for an order of Prohibition against the 1st & 2nd Respondents from proceeding with the charging and/or hearing and determination and/or prosecuting the Ex parte Applicant herein with the Charge of Conspiracy to Defraud contrary to Section 317 of the Penal Code and Obtaining Money by False Pretenses contrary to Section 313 of the Penal Code and/or taking any further actions that will adversely affect the rights and fundamental freedoms of the Applicant and enforcing warrants or requiring appearance in court in Wanguru Criminal Case Number E752 of 2024.



- c. The leave so granted do operate as a stay of the proceedings in Wanguru Criminal Case Number E752 of 2024 or enforcement of any arrest warrant or undertaking of any steps pending the hearing and determination of the substantive judicial review motion.
- d. Substantive notice of motion be filed within 21 days from today.
- e. Directions on 13.2.2025 before the trial court.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 30TH DAY OF DECEMBER 2024. RULING DELIVERED EXTEMPORE THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

In the presence of: -

Mr. Wanyaga for the Applicant

Mr. Naulekha for the state/2nd Respondent

N/a for 1st Respondent

Mr Kamau for the 1st interested party

Ms. Ochieng for 2nd interested party

Court Assistant - Jedidah

M. D. KIZITO, J.

