



Gichuki v National Police Service & 4 others (Criminal Miscellaneous Application E040 of 2023) [2024] KEHC 9816 (KLR) (25 July 2024) (Ruling)

Neutral citation: [2024] KEHC 9816 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL MISCELLANEOUS APPLICATION E040 OF 2023**

**PN GICHOHI, J
JULY 25, 2024**

BETWEEN

DAVID MWANGI GICHUKI APPLICANT

AND

NATIONAL POLICE SERVICE 1ST RESPONDENT

OFFICER COMMANDING GILGIL POLICE STATION 2ND RESPONDENT

DIRECTOR CRIMINAL INVESTIGATIONS 3RD RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION 4TH RESPONDENT

ATTORNEY GENERAL 5TH RESPONDENT

RULING

1. By a Notice of Motion dated 3rd April 2023 and Amended on 4th July 2023, the Applicant moved this Court under Article 165 of the *Constitution* of Kenya 2010 seeking orders:-
 1. Spent.
 2. Spent.
 3. Spent.
 4. That the Applicant's cash bail of Kshs. 30,000/= be released to the Applicant.
2. The grounds on the face of the application and supported by the Affidavit sworn by David Mwangi Gichuki on 4th July 2023 are that as a licenced Auctioneer trading as Davies Auctioneering Services, he was issued with Warrants of Attachment and Sale of the Respondent's movable assets in Nakuru SCC COMM Case No. 533 of 2022 *Thomas Machuma Nyamota t/a Beemtho Services Limited v David Ngugi t/a Silver Hill School*.



3. He therefore proceeded to the Respondent's place of business and proclaimed the Respondent's assets on 23rd January 2023.
4. However, the Respondent was violent when he was served with the proclamation prompting the Applicant herein to apply before the court for police assistance and indeed, he was issued with an order dated 14th February 2023 for OCS Gilgil to assist him. He therefore served the said OCS with the Order and proceedings on 17th March 2023 which was later amended on 28th March 2023 from the court as it cited the wrong case number.
5. He proceeded to OCS Gilgil on 29th March 2023 for assistance but he was locked up on the grounds that the Order issued on 14th February was fake for it was not verified. At that point, the Applicant called his advocates and who in turn moved the court and an order for the Applicant's release.
6. The OCS Gilgil however refused to release the Applicant and instead referred the matter to the DCI. The Applicant was released on a cash bail of Ksh. 30,000/= with instructions to appear before Naivasha Court on the 4th April 2023 on a charge of purgery. He urged the Court to allow his application.
7. Though served, there was no response to this application by the 1st, 2nd, 3rd and 5th Respondent. The 4th Respondent however filed Replying Affidavit sworn on 19th March 2024 by James Kihara for the 4th Respondent. He deponed that the office of the 4th Respondent is not privy to the facts of the case and in any event, if the Applicant is aggrieved that orders issued by the court were not complied with, he should have filed contempt of court proceedings against the Contemnor. He therefore urged the Applicant to withdraw the 4th Respondent from these proceedings.

Determination

8. The 4th Respondent's application was not opposed. In any event, there is nothing to show how the 4th Respondent was involved in this matter. His request was allowed. The 1st, 2nd, 3rd and 5th Respondents never responded to this application and did not attend court thus leaving the application unopposed.
9. It is apparent that the only issue here is release of the cash bail from Gilgil Police Station and as confirmed by the copy of the receipt annexed to the supporting Affidavit, the amount is Kshs. 30,000/= . There is no evidence attached to show that the Applicant appeared in court for plea whereupon the Police Cash bail ought to have been released to the Applicant immediately upon taking plea to use it as he deemed fit.
10. In the circumstances, there is no reason why the police should continue withholding it if they have not yet done so.
11. For those reasons the application 4th July 2023 is allowed that:-
 1. The Cash bail of Kshs. 30,000/= deposited by the Applicant at Gilgil Police Station/ DCI Gilgil on 30/03/2023 be released to the Applicant forthwith.
 2. There are no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 25TH DAY OF JULY, 2024.

PATRICIA GICHOHI

JUDGE

In the presence of:

N/A for Mr. Bosire for Applicant



N/A for Respondents

Ruto- Court Assistant

