



Directline Assurance Company Limited & 4 others v Inspector General of Police & 3 others; Kiarie & 14 others (Intended Accused) (Criminal Revision 47 of 2024) [2024] KEHC 13358 (KLR) (31 October 2024) (Ruling)

Neutral citation: [2024] KEHC 13358 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION 47 OF 2024
DR KAVEDZA, J
OCTOBER 31, 2024**

BETWEEN

**DIRECTLINE ASSURANCE COMPANY LIMITED 1ST APPLICANT
ROYAL MEDIA SERVICES LIMITED 2ND APPLICANT
ROYAL CREDIT LIMITED 3RD APPLICANT
SAMUEL KAMAU MACHARIA 4TH APPLICANT
PURITY GATHONI MACHARIA 5TH APPLICANT**

AND

**INSPECTOR GENERAL OF POLICE 1ST RESPONDENT
DIRECTOR OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT
DIRECTOR OF PUBLIC PROSECUTIONS 3RD RESPONDENT
HON ATTORNEY GENERAL 4TH RESPONDENT**

AND

**JANICE TERESA WANJIKU KIARIE INTENDED ACCUSED
VICTOR BLASCO WIJENJE INTENDED ACCUSED
JANUS LIMITED INTENDED ACCUSED
HARBOR CAPITAL LIMITED INTENDED ACCUSED
KEVIN MCCOURT INTENDED ACCUSED
SURE INVEST LIMITED INTENDED ACCUSED
JAMES GACOKA INTENDED ACCUSED**



TRIAD NETWORK LIMITED	INTENDED ACCUSED
GORDON RADIER WERE	INTENDED ACCUSED
AKM INVESTMENT LIMITED	INTENDED ACCUSED
SKENNY INVESTMENT PTY LIMITED	INTENDED ACCUSED
JOHN MAONGA	INTENDED ACCUSED
ENID MURIUKI	INTENDED ACCUSED
WINNIE JUMBA	INTENDED ACCUSED
PHILIP ALIKER	INTENDED ACCUSED

RULING

1. The applicants initially approached the subordinate court, seeking leave to institute private prosecution against the intended accused persons named in these proceedings. However, a contentious issue arose when the court, in the exercise of its discretion, invited the intended accused persons to participate in the matter. The applicants, aggrieved by this invitation, raised a preliminary objection, vehemently opposing the involvement of the intended accused in the application. Despite their protestations, the court ruled in favour of allowing the participation of the intended accused persons.
2. Following this ruling, the applicants escalated the dispute by filing an application for contempt of court against the respondents. Simultaneously, they sought stay orders to halt any further proceedings in relation to an ongoing arbitration concerning the Directline Company Limited Shareholder Dispute. However, at the time of these applications, the contempt proceedings remained unheard and undetermined. In the interim, the arbitration process was concluded, culminating in an arbitral award being issued on 11th May 2022 a decision that was rendered before the applicants' contempt application and their stay application were ever considered or determined by the court.
3. In response to these developments, the applicants sought intervention from the High Court, seeking a stay of further proceedings in the subordinate court under Criminal Revision No E115 of 2022. On 5th August 2022, the Hon. Justice Githua, recognizing the gravity of the issues raised, granted an order staying all further proceedings in Milimani Chief Magistrate's Court Miscellaneous Application No E2754 of 2021, pending the final determination of the applicants' originating motion. The High Court's stay order was intended to preserve the status quo, ensuring that the subordinate court did not take any further action that might prejudice the applicants' interests while the substantive issues remained unresolved.
4. In a surprising and irregular turn of events, on 14th August 2024, the subordinate court, seemingly oblivious to the stay order issued by the High Court, proceeded to dismiss the applicants' suit under Section 206 of the Criminal Procedure Code. The dismissal was premised on the non-appearance of the applicants, and the court further awarded costs against them. This development was not only unexpected but also patently irregular, given that the proceedings in the subordinate court had already been stayed by a superior court's order.
5. Upon a thorough examination of the record, it is abundantly clear that the High Court's stay order remained in force at the time the subordinate court purported to dismiss the applicants' suit. The subordinate court's decision to proceed despite the existence of a valid stay order from a superior court was irregular. Once the High Court issued the stay order, the subordinate court's role became strictly



subordinate to the directive of the High Court. It was bound to maintain the status quo and halt all further proceedings until the stay was lifted or the originating motion was determined. Any action to the contrary undermined the authority of the High Court and subverted the judicial process.

6. As to whether the subordinate court was duly notified of the existence of the stay orders, I have carefully reviewed the ruling delivered on 5th August 2022. During the delivery of that ruling, the learned counsel representing the applicants, respondents, and the intended accused persons were present in court. As officers of the court, these advocates had the duty to inform the trial court of the stay order issued by the High Court. Their failure to do so constitutes a serious omission. Proper conduct would have required them to draw the trial court's attention to the stay order, ensuring that no irregular proceedings were undertaken in breach of the High Court's directive.
7. In light of these facts, the proceedings and orders issued by the subordinate court after 5th August 2022 are hereby subject to revision under Section 364 of the Criminal Procedure Code. The trial court's failure to abide by the stay order rendered all subsequent proceedings voidable.
8. Consequently, I hereby set aside all proceedings and orders issued by the trial court from 5th August 2022 onwards. In the interests of justice, I further reinstate Milimani Chief Magistrate's Court Miscellaneous Application No E2754 of 2021, restoring the matter to the status it held prior to the improper dismissal. The subordinate court is directed to refrain from further action in the matter unless and until the High Court's stay orders are vacated or varied.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 31ST DAY OF OCTOBER 2024

D. KAVEDZA

JUDGE

In the presence of:

Ndung'u Kuria h/b for Kamau Kiarie for the Applicants

Kitheng'a for the 2nd intended accused

Thume h/b for Ndumia for the 11th intended accused

Sirawa h/b for Kiarie for the 12-14th intended accused persons

Wesonga h/b for Gichuhi for the 15th intended accused

Respondents absent

Achode Court Assistant.

