



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL DIVISION**

**MISC. CRIMINAL APPLICATION NO. E061 OF 2021**

**BETWEEN**

**1. TASLEEM BUTT**

**2. IMRAN CHAUDRY.....APPLICANT**

**-VS-**

**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT**

**R U L I N G**

1. Tasleem Butt and Imran Chaudry the applicants herein together with Mehtab Ahmedali Hussein are jointly charged in Mombasa CMC CR. Case No. E192 of 2021 with the offence of obtaining money by false pretence contrary to Section 313 of the penal code.
2. Particulars are that the accused persons on diverse dates between the 6<sup>th</sup> and 30<sup>th</sup> day of December 2020, at Kamiti Prison in Ruiru sub-county within Kiambu County, jointly with others not before court, obtained Kshs.934,900/= from Rafil Natarajn by falsely pretending to be in a position to help clear containers at the port of Mombasa a fact they knew to be false or untrue.
3. In Count II, the Applicants and their co-accused were charged with the offence of conspiracy to commit a felony contrary to Section 393 of the penal code.
4. By a notice of motion dated 30<sup>th</sup> day of June 2021 the applicants pursuant to Articles 50(2) (E) & 165(3) of the constitution of Kenya 2010, Order 51 Rule 1 of the Civil Procedure Rules Section 81 and 380 of the Criminal Procedure Code and Section 3A of the Civil Procedure Act sought that proceedings in Mombasa CMCM CR. Case No. E192 of 2021 be stayed pending hearing and determination of the application herein.
5. They also sought that the trial court be directed to supply them with certified typed proceedings within 30 days before *interpartes* hearing of the application.
6. They sought that an order do issue directing that the proceedings in Mombasa CMC CR. No. E192 of 2021 to start *denovo* before another court of competent geographical jurisdiction.
7. The application was supported by the affidavit of Tasleem Butt sworn on 30<sup>th</sup> day of June 2021 and grounds on face of the application. By a Replying Affidavit sworn on 15<sup>th</sup> July 2021 P.C. Wangeci Mugwimi opposed the application.
8. Currently the Applicants are all in custody and being brought to court by the state and they have not shown any hardship being suffered as their visitors are not yet being allowed into prison to visit inmate due to COVID-19 pandemic until vaccination is attained 100%.
9. I do find that the application has no merit and the same is dismissed. Mombasa CMC CR. Case No. E192 of 2021 to proceed to trial. Mention on 8/11/2021 in Court No. 5.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 28TH DAY OF OCTOBER, 2021**

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

In the presence of:

Court Assistant - Turuki

Ms. Nabwana Advocate for Applicants – No appearance

Mr. Mulamula Advocate for Respondents – Present in person

Hon. Lady Justice A. Ong'injo

Judge