

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VIHIGA

MISCELLANEOUS CRIMINAL APPLICATION NO. 44 OF 2019

REPUBLIC.....APPLICANT

VERSUS

THE DPP.....1ST RESPONDENT

THE ATTORNET GENERAL.....2ND RESPONDENT

PRINCIPAL MAGISTRATE MUMIAS COURT.....3RD RESPONDENT

OMAR OSORE.....INTERESTED PARTY

EX PARTE: CHRISTINE AMACHANJI SUMBA

JUDGMENT

1. The *ex parte* applicant herein has moved the court for Judicial Review orders with relation to criminal proceedings that she claims have been brought against her by the 1st respondent before the 3rd respondent.
2. The first prayer in the substantive Motion is for the quashing of the criminal charges in Mumias PMCCRC No. 1421 of 2018. The *ex parte* applicant has not attached to her affidavit in support a copy of the charge sheet, which carries the charges or the decision of the 1st respondent that she is asking the court to quash. The court does not act blindly. It has to see evidence that those charges do in fact exist. It is not enough to recite them in the affidavit in support. The actual document drawn by the 1st respondent which bears those charges ought to be exhibited. As it is there is no evidence that those charges exist.
3. Secondly, the said charges are alleged to have been laid before the 3rd respondent in Mumias PMCCRC No. 1421 of 2018, and it is in that context that the 3rd respondent has been named as a party to these proceedings. Yet no document has been laid before this court as evidence that such a suit exists before the 3rd respondent, where the *ex parte* applicant is the accused person.
4. The basis of these Judicial Review proceedings ought to be the charges in Mumias PMCCRC No. 1421 of 2018, and the charges themselves ought to have been placed on record. With that the averments in the affidavit that the *ex parte* applicant made in her affidavit in support amount to mere allegations.
5. This court is not sufficiently moved, in the circumstances, to make the orders sought. I shall accordingly dismiss the Motion dated 23rd July 2019. The stay orders made on 2nd July 2019 are hereby discharged. It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 26TH DAY OF NOVEMBER 2021

W. MUSYOKA

JUDGE