



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**PETITION NO. E024 OF 2021**

**PRISCILLA GATHONI.....1<sup>ST</sup> PETITIONER**

**WILLIAM KIRINYA.....2<sup>ND</sup> PETITIONER**

**HENRY MWORIA.....3<sup>RD</sup> PETITIONER**

**JOSEPH MUTHAMIA MACHIANI.....4<sup>TH</sup> PETITIONER**

**JOHN MARETE.....5<sup>TH</sup> PETITIONER**

**VERSUS**

**CATHERINE MWENDWA MWIRIGI.....1<sup>ST</sup> RESPONDENT**

**THE CHIEF MAGISTRATE MERU.....2<sup>ND</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**AND**

**THE OFFICE OF DIRECTOR OF**

**PUBLIC PROSECUTION.....1<sup>ST</sup> INTERESTED PARTY**

**DIRECTIONS**

1. The Petitioners are facing Criminal Trial in Meru CMCCR. Case No. 189 of 2019 for various offences including forgery contrary to section 350 of the Penal Code in respect of a will of a deceased and threatening to kill contrary to section 223 (1) of the Penal Code in respect of the 1<sup>st</sup> Respondent complainant in the case.
2. Following the recusal of the trial court, the Petitioners filed this petition dated 29/10/2021 seeking among other relief a declaration that the recusal of the 2<sup>nd</sup> Respondent trial court not transfer to another court is unlawful, unconstitutional, and therefore invalid. By Notice of Motion, the applicant contemporaneously with the filing of the Petition sought the stay of proceedings in the criminal trial pending the hearing and determination of the Petition.
3. The Petitioner's petition and application were by order of the court made on 01/11/2021 certified urgent by the court (Otieno, J.) and set for directions on 16/11/2021 before Court 1 and on 16/11/2021, hearing was set for 23/11/2021 and the DPP, the Interested Party directed to file Replying Affidavit.
4. On 23/11/2021, Counsel for the Petitioner requested the trial court to direct that the matter proceed for hearing of the Petitioner rather than the interlocutory motion so as to expedite determine and in the meantime prayed for stay of proceedings. The 1<sup>st</sup> Respondent considers the petition a delaying tactic and prays that the trial proceeds to hearing.
5. The Attorney's General Counsel agreed with the 1<sup>st</sup> Respondent and cited Grounds of Opposition filed. The DPP'S counsel was absent but he has filed Grounds of Opposition dated 22/11/2021 principally contending that "the 1<sup>st</sup> Respondent is also entitled to a fair hearing as per Article 50(1) of the Constitution of Kenya, 2010" The court reserved direction for 25/11/2021.

## DETERMINATION

6. The court agrees that both the Petitioners and the Respondent and Interested Party are entitled to a fair hearing in accordance with Article 50(1) of the Constitution. In granting fair hearing in this matter the question whether the recusal of the trial court and the continued proceedings of the trial is a violation of the Petitioners' rights as contended in the Petition must be determined before the trial proceeds because should the trial proceed in the meantime, before such determination, the substratum of the Petition should be eroded as what is complained of in the petition would already have occurred.

7. The justice of the case therefore lies in the expeditious hearing and determination of the Petition. Under Rule 3(4) of the Mutunga Rules (The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) practice and Procedure Rules 2013, the court is required to facilitate the "just, expeditious, proportionate, and affordable resolution of all cases."

8. In the interest of the just and expeditious disposal of this petition the court will make directions that the Respondents and Interested Party file their responses to the Petition itself rather than Notice of Motion dated 29/10/2021, which will be taken to have been sub-subsumed in the Petition, within 14 days and the Petitioners thereafter to file, if necessary, supplementary Affidavit within 7 days, so that the Petition itself is heard on expedite basis on the 15/1/2021 during the court vacation.

9. In the meantime, the impugned criminal proceedings which are the subject of the Petition shall be stayed until then or until further orders of the Court. Liberty to file skeleton submissions.

*Orders accordingly.*

**DATED AND DELIVERED THIS 25<sup>TH</sup> DAY OF NOVEMBER 2021.**

**EDWARD MURIITHI**

**JUDGE**