



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. CRIMINAL APPLICATION CASE NO. 73 OF 2020

CATHERINE SITUMAI MUYA.....1ST APPLICANT

NJENGA ORLALE.....2ND APPLICANT

VERSUS

THE DCIO KABETE POLICE STATION.....1ST RESPONDENT

THE OCS KABETE POLICE STATION.....2ND RESPONDENT

DIRECTORATE OF CRIMINAL INVESTIGATIONS.....3RD RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS.....4TH RESPONDENT

RULING

1. The Applicants Catherine Situmai Muya and Njenga Oralle, hereinafter the 1st and 2nd Applicants filed an application by way of a Notice of Motion dated 24th February, 2020. It has been brought under **Article 10, 25, 27, 28, 40, 47, 48, 49, 50(1), 157(II) and 159(1)(b), 232, 238 and 244 of the Constitution** together with **Sections 118, 118A, 119, 120 and 121 of the Criminal Procedure Code, Sections 3, 49, 55, 60 and 92 of the 5th Schedule of the National Police Service Act; Sections 4 and 5 of the Office of the Attorney General Act** and all enabling provisions of law.

2. The Applicants seek orders;

“(1). That the Honourable Court do issue a Summons to the 1st and 2nd Respondent requiring the said officers to give, file or render a proper inventory detailing the whereabouts condition and security of the 20 foot container belonging to the Applicant herein confiscated from his Residence at Thiongo Road Estate Westlands Sub-County of Nairobi County on 6th June, 2019 including the relevant Occurrence Book (OB) number to book the incident antecedent and/or subsequent to the said seizure.

(2) That costs of this Application be borne by the Respondents.”

3. The application is premised on 14 grounds cited on the face of the application. It is further supported by an affidavit sworn by the 2nd Applicant with the consent of the 1st Applicant who is his wife, which consent is annexed to the affidavit.

4. The application is opposed. On behalf of the Respondents, CPL Julius Oguma filed a replying affidavit dated 25th September 2020. In brief CPL Oguma deposes that the container in question was seized from the Applicants place on 6th June, 2019 after the police received a report of its theft from its owner one Jane Wambui, on 29th May 2019. He deposes further that the 2nd Applicant led police to the place where he alleged to have bought the container from, only to lead them to the farm of Jane Wambui where her container was stolen from.

5. CPL Oguma deposes that the 2nd Applicant led police to the home of the one who sold the container to him but that to-date he has not been found. The officer deposes further that the 2nd Applicant was treated as a victim who was defrauded by people who are yet to be traced.

6. I have considered the application and do find that the same is spent. Prayer 1, which is the substantive order sought in this application required of the court for an order to require the police to file or render a proper inventory detailing the whereabouts, condition and security of

the 20-foot container belonging to the Applicant herein confiscated from his Resident. The whereabouts of the container has been ascertained. The ownership of the container is controversial. The officer investigating the case, CPL Oguma has sworn an affidavit which demonstrates clearly why the police seized the container from the Applicant's residence, and why it is being detained by the police.

7. I have come to the conclusion that this is a matter under investigation and that the police should be allowed to complete their work. Accordingly, this application is premature and the same is dismissed with no order as to costs.

DELIVERED THROUGH TEAMS THIS 22ND DAY OF OCTOBER, 2020.

LESIT, J

JUDGE