



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW APPLICATION NO. MISC E077 OF 2020**

**IN THE MATTER OF AN APPLICATION FOR LEAVE FOR**

**JUDICIAL REVIEW ORDERS OF PROHIBITION AND CERTIORARI**

**BETWEEN**

**SOMESH KUMAR CHOUDHURY.....APPLICANT**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTION.....1<sup>ST</sup> RESPONDENT**

**INSPECTOR GENERAL OF THE NATIONAL**

**POLICE SERVICE.....2<sup>ND</sup> RESPONDENT**

**THE CHIEF MAGISTRATE'S COURT,**

**MAVOKO LAW COURTS.....3<sup>RD</sup> RESPONDENT**

**AND**

**MAISHA PACKAGING COMPANY**

**LIMITED.....1<sup>ST</sup> INTERESTED PARTY**

**VIAMI IMPEX LTD.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

**The Application**

1. The Applicant herein are aggrieved by a decision by the Respondents to charge them with the offence of obtaining goods by false pretences before the Mavoko Law Courts Chief Magistrate's Court, in Criminal Case Number 533 of 2020 and Criminal Case Number 557 of 2020, wherein the Applicant is the 2nd Accused's Person.. The Applicant has therefore moved this Court in an application by way of Chamber Summons dated 17<sup>th</sup> December 2020, seeking orders that the said application be certified urgent, and for leave to apply for judicial review orders of certiorari and prohibition to quash and prohibit the said criminal proceedings.

2. The Applicant also seek orders that the said leave operate as a stay of the said criminal proceedings, and that the costs of the application be provided for. The application is supported by the Applicant's statutory statement dated 17<sup>th</sup> December 2020, and a verifying affidavit sworn on the same date by the Applicant.

3. I have perused the *ex parte* Applicants' Chamber Summons dated 27<sup>th</sup> April 2020 and supporting documents, and note that the *ex parte* Applicants are seeking leave to bring orders in relation to criminal proceedings in the Mavoko Law Courts, which are under the supervisory jurisdiction of the Machakos High Court. Furthermore, the Applicant has also stated that 1<sup>st</sup> Accused person in the subject criminal proceedings, namely one, Harenkumar Damji Mandavia, has moved the High Court at Machakos in Judicial Review Application No. 103 of 2020, whereby the Court granted interim Order of Stay of proceedings pending determination of the substantive motion application. There is

thus the additional risk of this Court issuing conflicting orders in relation to the same criminal proceedings.

4. In the premises I direct and orders that this suit be and is hereby transferred to the Machakos High Court for further hearing and determination. The Applicant's Chamber Summons dated 27<sup>th</sup> April 2020 shall accordingly be placed before the **Duty Judge** at the **Machakos High Court** on **19<sup>th</sup> January 2021**, for directions.

5. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling and orders by electronic mail to the *ex parte* Applicants, and to the Deputy Registrar of the Machakos High Court, by **close of business on 6<sup>th</sup> January 2021**.

6. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 22<sup>ND</sup> DAY OF DECEMBER 2020**

**P. NYAMWEYA**

**JUDGE**