



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL CASE NO. 10 OF 2019**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**NAOMI NECHESA.....1<sup>ST</sup> ACCUSED**

**FAITH KANANU.....2<sup>ND</sup> ACCUSED**

**RULING**

The two accused persons named above are jointly charged with the murder of Felix Ng'ang'a contrary to Section 203 as read with Section 204 of the Penal Code. The offence is alleged to have been committed on the 14<sup>th</sup> day of January 2019 at unknown time at Londiani within Kericho County. Each accused has pleaded not guilty to the charge.

This ruling relates to the Chamber Summons dated 25<sup>th</sup> July 2019 and filed on the same date. The Applicant is the 1<sup>st</sup> accused herein. The application is anchored on Section 23(5) of the Access to Information Act 2016. It seeks leave of this court to enforce the order issued by the Commission of Administrative Justice (The Commission) issued on 2<sup>nd</sup> July 2019. The grounds in support of the application are that the Commission issued an order against the Officer Commanding Riruta Police Station (OCS) who is the Respondent requiring him to supply information sought by the Applicant vide the letter dated 2<sup>nd</sup> July 2019; that the Respondent has failed to comply and has not appealed against that order and that it is in the interest of justice to grant the order sought.

Although the prosecution responded to the application by way of submissions, Mr. Michuki urged that this court to ignore those submissions because the application is *ex parte*. I have read Section 23(5) of Access to Information Act. I have confirmed that indeed an application of this nature is made *ex parte*. This court will therefore not consider the submissions by the prosecution counsel.

I have read the attachment to the supporting affidavit specifically the letter to the OCS Riruta Police Station dated 2<sup>nd</sup> July 2019. In the letter the information sought from the OCS include Occurrence Book (OB) extracts in respect of the complaint made by the Applicant. It also seeks OB extracts in respect of report made by one Simon Njuguna Githinji and OB extracts on the arrest and charging of Simon Njuguna Githinji and Erick Otieno as well as entries in respect of prisoners held in cells at the Riruta Police Station from 21<sup>st</sup> to 25<sup>th</sup> January 2019. The OCS Riruta did not act on this letter necessitating a complaint to the Commission on Administrative Justice. His response is that the applicant follows the laid down procedure by seeking an order of the court.

I have considered this application. I have noted that the applicant in the supporting affidavit and the submissions made in court has not justified why she is seeking orders of this court to enforce orders in respect of persons who are not subject to the matter before this court. I note that it was not explained why the applicant is seeking information in respect of these people or what connection there is between these people and this case. I find that I have problems in granting leave to enforce the order in respect of (b), (c) and (d) of the letter dated 2<sup>nd</sup> July 2019. For this reason I will grant leave to the applicant to enforce the order of the Commission in respect of the Applicant, which is bullet (a) in the letter dated 2<sup>nd</sup> July 2019. I decline to grant orders in respect of (b), (c) and (d) of the letter dated 2<sup>nd</sup> July 2019. For the avoidance of doubt this court hereby grants the Applicant leave to execute the order of the Commission on Administrative Justice in respect to access to information and records held by Riruta Police Station that are relevant to the 1<sup>st</sup> Accused Naomi Nechesa. Orders shall issue accordingly.

**Dated, signed and delivered this 23<sup>rd</sup> September 2019.**

**S. N. Mutuku**

**Judge**