



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

MISCELLANEOUS CRIMINAL APPLICATION NO 11 OF 2018

ISAIAH KIPLAGAT.....1ST APPLICANT

NICHOLAS KOSGEI TARUS.....2ND APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. By the originating Notice of Motion filed herein the applicants who have been suspects in investigation onto a criminal offence of stealing stock and handling stolen property contrary to sections 278 and 322 (1) (2) of the Penal Code – which were the subject of proceedings before the Eldama Ravine Principal magistrate’s Court Misc Application No. 2 of 2018 - seek specific prayers as follows:

(a) THAT this matter be certified as urgent, service be dispensed with and it be heard ex-parte in the first instance.

(b) THAT since the matter arose at Mogotio and investigations are complete, the accused persons do take their plea at the Eldama Ravine Law Courts.

(c) THAT owing to the health conditions of the donkeys, security threats on the Applicants and the high cost of transporting the livestock to Makindu, it will be justiceable if the matter is disposed at The Eldama Ravine Law Courts.

2. The APPLICATION is supported by the affidavit of ISAIAH KIPLAGAT and grounds set out in the application as follows:

(1) “THAT on the 17th day of January, 2018 the applicants bought 52 donkeys for value without knowledge of any theft of the donkeys at a consideration of Kenya Shillings 580,000/-.

(2) THAT on the 18th January, 2018 the Applicants were arrested on grounds of handling stolen live stock and booked at Mogotio Police.

(3) THAT since their arrest, investigations have been complete and the same should be disposed at Eldama Ravine Court.

(4) THAT the culprits in this offence have not been arrested despite the DCIO Makindu knowing them and their places of aboard.

(5) *THAT the move to have the Applicants report at Makindu Police Station is to have them as sacrificial lambs.*

(6) *THAT the Applicants have received constant threats from the complainant and their life is endangered should this court uphold the orders of the lower court.”*

3. The Principal magistrate’s Court had by its order made on 24th January 2018 in the said proceedings Misc. Application No. 2 of 2018 made the following order for the applicant to report to DCI Office at Makindu for purposes of further investigations in the matter, as follows:

“Order

The 1st and 2nd respondents (Isaiah Kiplagat and Nicholas Kosgei Tarus) to report to DCI Office Makindu on 1st February 2018, to enable Mr. Jimmy Kimaro (ASP) an investigator with Director of Criminal Investigations attached to the Director of Criminal Investigation Makindu to complete his investigations on the matter of stealing stock contrary to section 278 of the Penal Code and handling stolen goods contrary to section 322 (1) (2) of the Penal Code.”

4. At the hearing of the Notice of Motion before this Court, the DPP confirmed that the applicant here in were suspects in the matter other suspects have at Makindu have been granted anticipatory bail and a Ksh.600,000/- deposited with the OCS, Makindu as per the orders of the Makindu Court in the application for anticipatory bail and that there was therefore no basis for charging the applicants herein with the offences stated above as there are already other suspects at Makindu, and that if the Prosecution wishes to call the applicants as witnesses, they may do so by seeking summons for witness from the Makindu Court without the requirement of an order of the Eldama Ravine Court for the applicant to attend the DCIO for investigations.

5. Based on the information that there are already criminal proceedings contemplated against two suspects at Makindu Court, where the applicants may be **summoned as witnesses by that trial court**, there is no necessity for the Eldama Ravine court’s direction for the applicants to attend the Criminal Investigations Officer to assist in investigations on the matter. Moreover, a suspect has no duty to help the police in their investigations into a criminal offence against him.

Orders

6. Accordingly, for the reasons set out above, the Court in exercise of its revision powers under section 364 of the Criminal Procedure Code, quashes the order of the trial court dated 24th January 2018 requiring the applicants to attend the DCI office at Makindu on the 1st February 2018. There shall be no order as to costs.

DATED AND DELIVERED THIS 31ST DAY OF JANUARY, 2018.

EDWARD M. MURIITHI

JUDGE

Appearances: -

Mr. Nyagaka for the Applicants

Ms. Macharia for the DPP.