



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**MISC CR. APPLICATION NO. 1 OF 2018**

**REPUBLIC.....STATE**

**VERSUS**

**GLADYS WAMBUI MWANGI.....1<sup>ST</sup> APPLICANT**

**RAHAB MUKENYI AROMBA.....2<sup>ND</sup> APPLICANT**

**ALEX MUHANJI OKWEMBA.....3<sup>RD</sup> APPLICANT**

**JAMES MWAURA NGEI.....4<sup>TH</sup> APPLICANT**

**RULING**

I have considered the two applications before me one dated 10/1/2018 filed by Mr. Wambeyi Advocate on behalf of the 1<sup>st</sup> applicant while the other filed by Mr. Muthea dated 8/1/2018 on behalf of the 4<sup>th</sup> applicant.

The background of this matter is that all the 4 applicants were arraigned in court on 2/1/2012 but no charge were laid against them. The prosecution applied to hold the 4 in custody for purposes of **‘further investigations’**. The magistrate allowed this prayer and remanded the 4 into police custody for a period until 17/1/2018 when they were to appear in the High Court.

The Office of DPP was duly served with both applications. This morning the DPP was represented in court by a **Ms Sering** who told the court that she had no instructions on the matter. The court allowed the State Counsel time to seek proper instructions to enable her to respond to the two applications. The matter was listed for 2.30 pm. By 3.00pm when the court re-convened there was no representation from the office of the DPP thus both applications stand basically unopposed.

Regarding the application dated 5/1/2018 made on behalf of the 1<sup>st</sup> suspect I have perused the proceedings of that day. I note that no effort was made to serve counsel who was already on record. I also note that the orders were made ex parte and the 1<sup>st</sup> suspect was not allowed any opportunity to respond. This matter had been handled by Justice Korir on 5/1/2018. It is curious that 3 days later the High Court file is returned to the lower court for an application to freeze the accounts of the 1<sup>st</sup> suspect. That application ought to have been made in the High Court as this was a High Court file. I have looked at the affidavit filed by PC Boniface Maina in support of the application to freeze the account. I find no merit in the allegation that monies from that account may be used to **‘manipulate’** potential witnesses. The police remain at liberty to investigate the accounts with a view to determining debits and credits therefrom as well as bank documents, transaction records etc. However I find that the orders made by the magistrate’s court to freeze the accounts of the 1<sup>st</sup> suspect were made without any basis and were made ultra vires as this is a High Court matter. Therefore in exercise of the powers of the High Court to review those orders and I hereby quash the orders made by Hon. Kitur – Resident Magistrate to freeze the accounts of the 1<sup>st</sup> suspect.

Regarding the second application dated 8/1/2018 Counsel sought to have the 4<sup>th</sup> applicant released from police custody on reasonable bail terms. This application may as well extend to all the four applicants as they were all arraigned in court on the same date and in similar circumstances.

I have considered the submissions made by Mr. Muthea Advocate in support of this application. In particular I have carefully perused the Ruling dated 9<sup>th</sup> September, 2016 delivered by my learned senior brother **Justice Luka Kimaru** in **Misc Criminal Application No. 304 of 2016, MICHAEL ROTICH Vs REPUBLIC**. In his ruling Kimaru J held as follows

***“As stated earlier in this Ruling the recent trend where a person is arrested and arraigned in court within 24 hours specifically***

***for the prosecution to seek extension of time to continue to detain such person, without any charge or holding charge being preferred against such person is unconstitutional. The police have no authority in law to arrest and detain any person without sufficient grounds.....”*** (my own emphasis)

This is exactly the situation which pertains in this matter. The applicants have not been charged with any offence known to law. Not even a holding charge has been preferred against them. The Kenya Police must come to the realization that this country is now operating under a new constitutional order. Liberty of all persons is sacrosanct as provided for by the Bill of Rights. Article 49(x) (a) and (h) are all relevant. Article 49 (g) and (h) provide that

***“An arrested person has the right –***

***(g) at the first court appearance to be charged or informed of the reason for the detention continuing or to be released: and***

***(h) to be released on bond or bail on reasonable condition, pending charge or trial unless there are compelling reasons not to be released”***

It cannot do for police to seek to detain a suspect to allow them to investigate an offence. A person cannot be denied their liberty in order to facilitate their investigation by police. Indeed the logical thing is for investigations to be conducted which investigations would point to a suspect who would then be arrested and brought to court either on a firm charge or at the very least a holding charge.

As it is the applicant's have all been held in custody since 2/1/2018. In my view ten (10) days is sufficient time for police to have made a decision one way or another. I find that this application does have merit. I therefore direct that all the four applicants are to be released from police custody upon each posting a bail of Kshs. 500,000/= plus one surety of like sum. Each applicant so released on bail shall report to the Investigating Officer every day at 9.00am until 17/1/2018. It is so ordered.

**Delivered in Nakuru this 11<sup>th</sup> day of January, 2018.**

**MAUREEN A. ODERO**

**JUDGE**