



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT ELDORET**

**PETITION NO. 5 OF 2018**

**ARMSTRONG AOLL PINO RAJUL.....PETITIONER**

**VERSUS**

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

**KENYA POWER LIGHTING CO.....2<sup>ND</sup> RESPONDENT**

**CPL. FELIX MUTAL.....3<sup>RD</sup> RESPONDENT**

**RULING**

*ARMSTRONG AOLL PINO RAJUL* is in the lower court facing a charge of vandalism of Electrical Apparatus contrary to *Section 64(4) (b)* of the *Energy Act*.

The particulars of this offence are that on the night of 6<sup>th</sup> and 7<sup>th</sup> January 2017 at Airport – Mlango area within Uasin Gishu County he jointly with others not before court, vandalized 100 Kva transformer serial No. 33825 valued at Kshs.1.5 million, the property of Kenya Power.

The date the accused who is the applicant herein was arraigned in court as shown on the charge sheet is 31<sup>st</sup> January, 2017. By way of a Notice of Motion dated 11<sup>th</sup> June 2018 he came before this court seeking for orders that:-

- (1) The matter be certified extremely urgent and service therefore be dispensed with in the 1<sup>st</sup> instance and be heard on priority basis.
- (2) Pending hearing and determination of the petition a stay order do issue staying proceedings and subsequent mentions in Eldoret Chief Magistrate's court criminal case No. 465 of 2017.
- (3) Costs be provided for.

The application was founded on the affidavit of the applicant sworn on 11<sup>th</sup> June 2018 and the grounds carried on the notice of motion which are that:-

- (i) The hearing of the Eldoret Chief Magistrate's court criminal case No. 465 of 2017 was scheduled for hearing on 18<sup>th</sup> June, 2018.
- (ii) There is a pending petition before the High Court touching on the legality of the entire proceedings in the said Eldoret Chief Magistrate's court criminal case No. 465 of 2017.
- (iii) Should a stay order not be issued staying the proceedings perse in the subordinate court at Eldoret, the Constitutional rights of the Applicant are bound to be irreparably violated and shall render this application together with the petition herein filed nugatory.
- (iv) Respondents shall suffer no prejudice.

On 13<sup>th</sup> June, 2018 the court declined to grant the orders sought exparte. The applicant was ordered to serve for interparte hearing on 18<sup>th</sup> June, 2018. On 18<sup>th</sup> June, 2018 it was noted the service was not proper and the applicant was directed to effect proper service for hearing on 4<sup>th</sup> July, 2018. We ascertained service on 4<sup>th</sup> July, 2018 and the applicant argued the application. The application touches on a criminal matter, Eldoret Chief Magistrate's court Criminal Case No. 465 of 2017. The Notice of Motion shows it was to be heard on 18<sup>th</sup> June, 2018.

The application seeks stay of proceedings and subsequent mention in the said case. When this application was argued on 4<sup>th</sup> July, 2018 the applicant did not inform court as to what happened to the said case on the hearing date of 18<sup>th</sup> June, 2018. As of today I am not certain that the said case exists. Courts do not issue orders in vain. It is also clear that the application herein is an afterthought given that the applicant was charged on 31<sup>st</sup> January, 2017 and brought the application regarding the case on 11<sup>th</sup> June, 2018. The case the applicant is complaining about is before a legitimate and competent court of law. He is out on bond and the said court can competently address the issues he is uncomfortable with. If at the end of the day he won't be satisfied with the way his issues are handled and determined, the right of appeal is an avenue which can rightly be invoked for re-evaluation. If the orders sought are not granted he does not stand to suffer in anyway irreparable loss. The application is not merited and is hereby dismissed. It was not responded to and I therefore make no order as to costs.

The pending petition can be served and a hearing date be taken before the Deputy Registrar for its hearing, that is, if the Petitioner still wishes to pursue it.

**S. M GITHINJI**

**JUDGE**

**DATED, SIGNED and DELIVERED at ELDORET this 31<sup>st</sup> day of July, 2018**

In the presence of:-

Applicant

Mr. Mwelem – court assistant