



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 194 OF 2015

JOHN MUGO NJERU.....1ST APPLICANT
MARY WANJIRU BERNARD.....2ND APPLICANT
DAIMLER ENTERPRISES LIMITED.....3RD APPLICANT
DOUBLE CLEAN LIMITED.....4TH APPLICANT
RUORA INVESTMENTS LIMITED.....5TH APPLICANT
MARSTONS ENTERPRISES LIMITED.....6TH APPLICANT
NGINYO ROADWAYS LIMITED.....7TH APPLICANT

VERSUS

DIRETOR OF PUBLIC PROSECUTIONS.....1ST RESPONDENT
DIRECTORATE OF CRIMINAL INVESTIGATIONS.....2ND RESPPONDENT

RULING

By Notice of Motion dated 29th February, 2016, the Applicants seek the following two main prayers, namely:

1. That this court stays its own orders given on 25th February, 2016 requiring the 1st and 2nd Applicants to attend court on 2nd March, 2016 for purposes of taking plea in criminal case no. 1203 of 2015.
2. That the court be pleased to stay its decision given in Cr. Case No. 1203 of 2015 pending the hearing and determination of an intended appeal against the decision of this court given on 25th February 2015.

The main grounds on which the application is premised are that the Applicants intend to prefer an appeal against this court's entire ruling of 25th February, 2016, that the appeal being arguable if the ruling of this court of 25th February, 2016 is not stayed, the appeal is likely to be rendered nugatory, that orders given in the ruling of 25th February, 2016 conflict with other orders issued in High Court Environment and

Land Court Case No. 219 of 2015 in which the subject matter is the same as in the instant case, that the order issued by this court is likely to be misused by Jambo Holdings Limited who is a party in the land case and that it is the Applicants right to be accorded an opportunity to defend the land case.

I wish to make it clear from the outset that this ruling is given in brief due to time constraints to write a comprehensive ruling. In the last few days I have been on sick off and between 11th and 22nd April, 2016, I shall be at Eldoret High Court on official duties. A comprehensive ruling will be delivered on 11th May, 2016.

I have accordingly considered the rival submissions that were made before me on 18th March, 2016. It is important I emphasize that all the issues that were raised by the parties herein were well canvassed in my ruling of 25th February, 2016. I gave candid reasons why the subsistence of the civil case is not a bar to the Director of Public Prosecutions filing a criminal case against the 1st and 2nd Applicants herein. I also demarcated in that ruling what issues this court cannot interfere with as they are in the realm for determination by the civil court.

Be that as it may, I wish to point out that the provisions of the law under which this application was brought being Sections 356 and 357 of the Criminal Procedure Code cannot avail the Applicants the reliefs they are seeking. There also do not exist any special circumstances that would warrant the granting of the reliefs sought. Further, with regard to whether Jambo Holdings Limited should have been charged alongside the 1st and the 2nd Applicants, is a decision exclusively to be arrived by the DPP. This court is not an investigator and cannot interfere with the duties of the DPP. However, any person with a complaint against Jambo Holdings Limited is at liberty to file the same with the police after which investigations will follow. Furthermore, the contention by the Applicants that they ought not to have been charged because they hold a genuine title deed is an issue they shall canvass at the trial. It is in the trial that they will be accorded the opportunity to challenge the case for the prosecution.

In the premises, I hold that the application is not meritorious and the same is hereby dismissed with no orders of costs.

DATED and SIGNED this 8th day of **April, 2016**

G.W. NGENYE-MACHARIA

JUDGE

Delivered this 18th Day of April 2016

L. KIMARU

JUDGE

In the presence of:

1. *Kavula for Nyang'au for the Applicants*
2. *Ms. Atina for the Respondents*
3. *Mr. Mwangi for Jambo Holdings Limited (previously 10th Respondent)*
4. *No appearance for the Chief Magistrate's Court at Kiambu and Nairobi and the Chief Lands Registrar (previously 1st, 2nd, and 11th Respondents respectively)*