



REPUBLIC OF KENYA

HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.244 OF 2016

**IN THE MATTER OF MYSTERIOUS AND ENFORCED DISSAPPEARANCE OF WILLIE
KIMANI – ADVOCATE, JOSEPHAT MWENDWA AND JOSEPH MUIRURI**

BETWEEN

LAW SOCIETY OF KENYA.....1ST APPLICANT
WILLIE KIMANI.....2ND APPLICANT
JOSEPHAT MWENDWA.....3RD APPLICANT
JOSEPH MUIRURI.....4TH APPLICANT

VERSUS

ATTORNEY GENERAL.....1ST RESPONDENT
DIRECTOR OF PUBLIC PROSECUTIONS.....2ND RESPONDENT
INSPECTOR GENERAL OF POLICE.....3RD RESPONDENT
SAFARICOM LIMITED.....4TH RESPONDENT

AND

INDEPENDENT POLICING OVERSIGHT AUTHORITY.....1ST INTERESTED PARTY
INTERNATIONAL JUSTICE MISSION.....2ND INTERESTED PARTY

RULING

The 1st Petitioner made an application before this court for the 4th Respondent to be compelled to produce the phone call records in respect of the phone numbers registered to the 2nd, 3rd and 4th Petitioners. In particular, the 1st Respondent requested for the said phone call records from the period 9.00 a.m. on 23rd June 2016 to 30th June 2016. The request made by the 1st Petitioner was with a view to assisting the families of the said petitioners trace their whereabouts because at the time, the 2nd, 3rd, and 4th Petitioners

were missing. From the outset, Mr. Kiptiness, Learned Counsel for the 4th Respondent indicated to the court that the 4th Respondent was willing and ready to supply the information sought provided that the information was specific and within its possession. He further impressed upon the court that it was not necessary to enjoin the 4th Respondent as a party to the proceedings because, as a responsible corporate citizen, it will comply with the orders issued by the court if the information sought is within its possession. When the application was first listed before this court on 1st July 2016, this court directed the 4th Respondent to provide the information sought by the 1st Petitioner.

In subsequent proceedings, it became apparent that the information and data supplied by the 4th Respondent was not wholly suitable for the purpose for which the 1st Petitioner required the information. The data supplied by the 4th Respondent was not in the format that could aid the 1st Petitioner establish the final movements of the 2nd, 3rd and 4th Petitioners before they were brutally murdered. To its credit, the 4th Respondent offered (the offer was accepted) to meet with the representatives of the 1st Petitioner with a view to sorting out, from the data supplied, the information that the 1st Petitioner requested. After this meeting, the 1st Petitioner, while acknowledging the assistance provided by the 4th Respondent, was still of the view that the information supplied was inadequate.

From the submission made on behalf of the 4th Respondent, it emerged that the information sought by the 1st Respondent actually required the 4th Respondent's engineers to interpret the data to suit the 1st Petitioner's request. It also became apparent that some of the information and data sought by the 1st Petitioner could not be availed to it because the 4th Respondent was not in possession of such information. For instance, the 1st Petitioner had requested for information in respect of the tracking device in motor vehicle Registration No.KBX 126 C. This was the motor vehicle that the 2nd, 3rd and 4th Petitioners were last seen before their disappearance. The 4th Respondent explained that this information can only be provided by a satellite service provider. The 4th Respondent was not licensed to provide such service. Another piece of information sought which could not be supplied was in relation to data from the Base Transmitting Stations (BTS) closest to where the 2nd, 3rd and 4th Petitioners were abducted and later killed. The 4th Respondent explained that unless a call was made from the phones registered to the 2nd, 3rd and 4th Petitioners, the 4th Respondent's system would not record the information. The 4th Respondent emphasized that the system it maintains recorded data solely for the purpose of billing its customers for the services rendered. The 4th Respondent urged the court to also take into account the fact that the 4th Respondent operates within the terms of the licence issued to it by the Government.

The 1st Petitioner was not persuaded by this explanation. It took the view that the 4th Respondent can do more to aid families of persons in the position of the 2nd, 3rd and 4th Petitioners who had been abducted and could not immediately be traced. The 1st Petitioner was of the opinion that the 4th Respondent should use its financial and technological advantage to enable the information and data that had been sought by the 1st Petitioner to be availed.

Pursuant to the directions issued by the court in the course of the proceedings, the points of disagreement between the 1st Petitioner and the 4th Respondent was narrowed down. In the discourse between the two parties, it became evident to this court that the 4th Respondent is required to deploy more resources to assist those requiring information in respect of their loved ones who have disappeared or who are missing. The 4th Respondent prides itself as a leader in the application of telecommunication technology solutions to transform life. That being the case, as part of its corporate social responsibility, it can easily allocate resources so that the information, such as was sought by the 1st Petitioner can be availed as soon as possible. The 4th Respondent can also develop technology to enable easy tracing of those who are missing or have been disappeared. Of course, such information will be provided subject to privacy laws and the legal obligations placed on the 4th Respondent.

During the last mention of the application before this court, the 4th Respondent gave the undertaking that it will provide any other information within its possession that may be sought by the 1st Petitioner with a view to aiding justice in the case. This court has no doubt that the 4th Respondent will honour this undertaking. In the premises therefore, this court holds that the 4th Respondent substantially complied with the order issued by this court to supply the information that was sought by the 1st Petitioner. If the 1st Petitioner shall not be satisfied with the further information that it shall be provided by the 4th Respondent, it shall be at liberty to apply. Since it is no longer necessary for the 4th Respondent to be a party in the petition, the 4th Respondent is hereby discharged from these proceedings subject only to the undertaking it has given to the court. It is so ordered.

DATED AT NAIROBI THIS 12TH DAY OF AUGUST 2016

L. KIMARU

JUDGE