



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
MISC. CRIMINAL APPLICATION 325 OF 2016

NG'ANG'A MWANGI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

SAMUEL KARIUKI CHEGE.....INTERESTED PARTY

RULING

Nganga Mwangi the Applicant in the application dated 1st September, 2016 was the complainant in the Chief Magistrates Court at Milimani Cr. Case No. 644 of 2012. The trial was concluded and both accused persons namely; Samuel Kariuki Chege and Francis Kairianja Njoroge acquitted in respect of all the charges. The case related to a parcel of land namely RUIRU/KIU/BLOCK II (GITHUNGURI)/3877. On acquittal, the 1st accused Samuel Kariuki Chege made an application before the learned trial magistrate Hon. M. Mutuku, SPM for the release of the title deed to the said parcel of land to him. The order was issued on 25th August, 2016. The learned magistrate further directed the 1st accused to avail the original title deed to the investigating officer when and if required to do so. The complainant was dissatisfied with the order which culminated into the current application. It was filed vide a Chamber Summons in which he has requested the court to stay the said order directing the release of the title deed to the 1st accused.

On the 29th September, 2016, the 1st accused Samuel Kariuki Chege moved the court by Chamber Summons dated 28th September, 2016 by which he requested for the release of the Title Deed. His counsel, Mr. Ngugi also urged that the 1st Accused be made an Interested Party to this application. The latter request was granted by the court.

According to the Applicant who was represented by learned Counsel Mr. Kamonjo, the Applicant was dissatisfied with the judgment of the learned magistrate and he intends to appeal the same through the office of the Director of Public Prosecutions. He submitted that the release of the Title Deed to the 1st Accused would prejudice the complainant's pursuit of his interest to the title to the said land. He stated that immediately the judgment was delivered, the complainant wrote to the DPP asking him to appeal the decision. On behalf of the complainant, he too wrote a letter to the court requesting for typed proceedings for purposes of the intended appeal. He urged that the interest of the complainant was that he lived on the said land and that the trial court's finding that the title should be released to the 1st accused amounted to a legal misdirection. He submitted that the intended appeal was not frivolous and it was in the interest of justice that the title should not be released to the 1st accused.

Learned state counsel Ms. Akuja submitted that the DPP intended to appeal the decision and would separately be seeking for leave to appeal out of time.

Learned counsel, Mr. Ngugi for the 1st accused urged the court that the application be dismissed as it was premised on no known law. Furthermore, the submission that the complainant or the DPP would appeal the judgment was made from the bar as no Notice of Appeal or Petition of Appeal had been filed. In any case, the complainant had no *locus standi* to file the application or appeal the judgment as the same was in the confine of the DPP. He also submitted that this court had no jurisdiction to review administrative orders of the learned trial magistrate. In this regard, he submitted that the order issued for the release of the title deed to the 1st accused was administratively given as a matter of course since the 1st accused had been acquitted and the title was in his name.

I have accordingly considered the application and the respective submissions and I take the following view of the same. The Interested Party submitted that this court lacks powers and/or jurisdiction to hear the matter in question. As was held in **Owners of the Motor Vessel “Lillian S” v. Caltex Oil(Kenya) Ltd[1989] KLR 1;**

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings ...A court of law downs tools in respect of the matter before it the moment it holds that it is without jurisdiction.”

My take on this submission is that this court has inherent jurisdiction under Article 165 of the Constitution, 2010 which confers on it unlimited original jurisdiction in criminal matters and its supervisory powers over subordinate courts. Although ordinarily the proper way by which the Applicant would have moved the court was to appeal, where substantial injustice is likely to be occasioned, the court can invoke its inherent jurisdiction for purposes of doing substantive justice. I note this having regard to the fact that after the Hon. Magistrate issued the order releasing the title deed to the 1st accused, the Applicant made an application before her for review of the said order. The learned magistrate declined to review her orders and properly directed the Applicant to file an appeal. That now drives me to determine whether the Applicant had the *locus standi* to file the application dated 1st September, 2016.

The Interested Party submitted that the Applicant had no standing (*locus standi*) to bring the present application and that the mandate to do so would fall with the Office of the Director of Public Prosecution. This is evidenced by his letter to the Office of the Director of Public Prosecutions which was marked as received on 11th August 2016, seven days after the judgment, in which he urged the DPP to appeal the matter. There is further evidence sprinkled in the proceedings in this application where the matter was adjourned several times to enable the Office of the Director of Public Prosecutions to make a decision whether they would be proceeding with the intended appeal.

Under Article 157 of the Constitution, the Office of the Director of Public Prosecutions has the mandate to institute and undertake against any person before any court criminal proceedings in respect of any offence allegedly committed. In this case the Office of the Director of Public Prosecutions instituted the proceedings in the lower court and undertook the case to fruition whereupon the interested Party was acquitted. It therefore fell upon the DPP to file any applications or appeal with regard to the matter. The Applicant has no standing to institute proceedings in the matter as he was never a party in the trial. I draw emphasis in the fact that in criminal proceedings, the complainant is always the Republic which is represented by the DPP. The aggrieved party testifies as a State witness. In that case, the person who properly should appeal or file an application arising from the trial as the instant application is the DPP. In any case, if the DPP succeeds in the appeal, there will be, as the law provides, avenues through which the title can revert to the Applicant’s name. I hasten to add that the DPP, save for the coercion by the complainant, appeared not keen to appeal the judgment. It will not be in the interest of justice in the circumstances to order a stay of the order of the learned trial magistrate. This is inferred from the fact that it cannot be foreseen within what period the appeal will be filed and if filed, after how long it will be determined.

Finally, I do not wish to comment on the 1st Accused's application dated 28th September, 2016 as the same was a duplicate of the order issued by the learned magistrate that is subject of the instant application.

In the end, this application lacks merit and the same is accordingly dismissed with no orders as to costs.

Dated and Delivered at Nairobi this 15th day of December, 2016.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

- 1. Wanjala h/b for Kamonjofor the Applicant*
- 2. Ngugi for the interested party.*
- 3. M/s Nyauncho for the Respondent.*