



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**MISC. CRIMINAL CASE NO. 73 OF 2003**

1. RAHIM AHMED LALJI ]  
2. NAYER GURDEEP SINGH ]  
3. AHMED HASHAM LALJI ]  
4. B. AJIT KUMAR PATRO ]  
5. KIVINDU KIOKO ].....APPLICANTS

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Notice of Motion application dated the 18<sup>th</sup> July 2003 seeks the following orders:

- 1. That the Applicants be arrested by the Honourable Court.***
- 2. That the Applicants be admitted to bail pending arrest by the execution of their own personal bonds for appearance in court.***
- 3. That the commissioner of police, the police or any can enforcement agency be estopped and prevented from arresting the applicants for any offence or complaint relating to and emanating from any alleged transactions or dealings with Ms Baymer Trading company Ltd and one Roplus James Baya all of postal box number 205 Mariakani or any persons related to their or claiming through or under them in respect of any transaction between the applicants and the aforesaid persons and the applicants companies – Mombasa Grain milling company Atta Kenya Ltd, and Mombasa Maize Milling company Ltd.***
- 4. That the police or any other law reinforcement agencies be at liberty to attend court or a date that may be fixed for taking of plea in respect of any charges they may prefer against the accused persons.***

On 1<sup>st</sup> August 2003 the Attorney General filed a replying affidavit sworn PC Patrick Shiundu who

collected documents from the applicants premises for purposes of investigation.

It is not in dispute that the applicants had business relations with one Rophus Baya Trading or Baymer Trading Company Ltd.

In the supporting affidavit sworn by Nayer Gurdeep Singh at paragraph 3 he depones that they had business relations with M/s Baymer Trading Co. Ltd for a period spanning more than ten years and had ordered credit facilities to the said company which defaulted in servicing the facility and civil remedies were instituted.

In the course of recovering the debt Baymer Trading company Ltd confirmed the existence of the debt through its Advocate and offered to settle by installments.

A letter by Rukaria Mulwa & Co. Advocates is annexed to the plaint. In that letter in the last paragraph the Advocate observes,

***“We are aware that the said Baymer Trading Company Ltd has been paying its account, with your client and has made certain payment proposals to your client which your client has refused to respond to and brief the said Baymer Trading Co. Ltd is willing to honour.”***

After the initial investigations the file was forwarded to the Attorney General for perusal and directions.

The Attorney General vide a letter dated 11.11.2005 addressed to the Director of Criminal investigations noted

***“After carefully going through the witness statements and the documentary exhibits containing the file I concur with your findings and those of the investigating officer that this is a civil dispute between Momabsa Grain Millers CO. Ltd and Baymer Trading Company which can only be satisfactorily dealt within the civil courts. In the circumstance I advice that this file be closed NFPA and the parties be informed to seek appropriate remedy from the Civil Court.”***

This information was conveyed to the Applicants Advocate M/s Weloba & Co. Advocates vide a letter dated 11.1.2006 by the Provincial Criminal Investigating officer.

The application is opposed on the grounds that the DPP has powers to review the orders made by the AG. That under article 157 of the constitution the powers of the AG are transferred to the DPP further that a constitutional officer holder can revisit the orders of a previous one.

It is contended that the issue of legitimate expectation cannot be a bar to the DPP's powers of revisiting the earlier orders of the Attorney General and that the applicants should submit themselves to court and the matter be given a mention date so that the DPP can indicate whether proceedings can be taken against the applicants or not.

I have perused the record of proceedings. This is a very old matter of 2003. It ought to have been resolved one way or other.

The Attorney General has vide a letter dated 11.11.2005 noted that this was a civil dispute which ought to be resolved through the Civil Court and advised for the file to be closed and parties to be informed that they ought to seek appropriate remedies through civil courts. I have perused a letter by Cootow & Associates Advocates dated 8.9.2014 addressed to the Director of Public of Public Prosecution requesting for a review of the matter in the last paragraph but one, there is a pitch for review of the decision to charge the suspect.

There is no material placed before the court alleging that the DPP now intends to charge the applicants.

There is no evidence of new and important factors having been discovered after the Attorney General

made his decision necessitating a fresh review of the Attorney General's earlier orders.

The applicants had since 11<sup>th</sup> January 2006 been informed of the Attorney General's directions to the police to close the file. These directions emanated from investigations done by the police in respect to a complaint by Ms Baymer & Co. Ltd. Counsel for the applicants Mr. Wafula, has placed reliance on the case of Akaba Investments Ltd vs. Kenya Revenue Authority 2007 e KLR where Nyamu J. cited with approval the case of *O'Rally Vs. Mackman (1983) 2 AC 237* where Lord Diplock held,

***“Legitimate expectation may arise either from an Express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue.”***

I concur with Counsel for the applicants that the doctrine of legitimate expectation is applicable in this instant case.

A promise was made to the applicants way back in the year 2006 that there would be no prosecution by a public authority - The Attorney General. It would be unfair and unreasonable 10 years down the line for the DPP to state that he wishes to revisit the matter for purposes of review and have the applicants charged. The matter becomes more complicated when the court is not informed of the reasons for review of the orders of the Attorney General by the DPP.

It's noted that prayers No. 1, 2, and 4 have been overtaken by events subsequent to the directions by the Attorney General.

This is an old case of 2003 and it ought to come to an end. The complainant had been advised that he can seek remedy in civil litigation and there is evidence to the effect that matters relating to this case have been filed by way of civil litigation.

The complainant is therefore not without a remedy. I accordingly grant orders in terms of prayer No. 3 of the Notice of Motion application dated 18th July 2003 estoping and preventing the arrest of the applicants.

Ruling delivered dated and signed this **13th** day of **April, 2015** in open court and in the presence of:

Learned State Prosecutor Mr. Masila

Learned Counsel for the defence

Court clerk Musundi

**M. MUYA**

**JUDGE**

Certified copies of the Ruling to be furnished to the DPP and the applicants.

**M. MUYA**

**JUDGE**

13/4/2015