



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

MISCELLANEOUS CRIMINAL APPLICATION NO. 112 OF 2015

UMMULKAHAYS SADRI ABDULLA

KHADIJA ABUBAKAR

MARYAM SAID ABOUD

HALIMA ADAN.....APPLICANTS

VERSUS

O.C.S CENTRAL POLICE STATION

ANTI TERRORISM POLICE UNIT MOMBASA

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENTS

R U L I N G

1 The matter before me is an application by way of Notice of Motion under certificate of urgency dated 10th December 2015. In the application the applicants are seeking:

1 the matter to be certified urgent and heard ex parte in the first instance.

2. the Honorable court be pleased to certify the matter as facing a substantial point of law and issue of public interest and refer the same to the Honourable Chief Justice for the constitution of the said bench of uneven number of judges being not less than three for the hearing and determination of the application filed herewith.

3. the honorable court be pleased to order stay of taking plea or further proceedings and orders in criminal case No 2428 of 2015, Republic versus UMMULKHEYR SADRI ABDULLA & 3 OTHERS pending hearing and determination of this application inter parte.

2 The application is premised on the grounds on the face of it and the affidavits of the applicants herein.

On 10th December 2015 when the Application came before me, I certified the same as urgent but directed that the applicant serves the Respondents. This has been confirmed as having been done.

The parties are now before me for directions.

3 Having listened to the learned counsel for the applicant, Mr Mwadzogo and the response by Mr Muteti, learned counsel for the state, I have also read through the notice of motion application by the applicants and their supporting affidavits.

While I appreciate the high court's jurisdiction and supervisory powers as provided for under Articles 165 (3) (4) (6) and (7) of the Constitution a reading of the provisions relating to the powers and duties of the High court and the Director of Public Prosecution with regard to whether or not to stay plea taking and any other proceedings in criminal case No 2429 of 2015. Republic versus OMMULKHAYR SADRI ABDULLA & 3 OTHERS is necessary.

4 under Article 157 (6) (a) of the Constitution it is provided that:

“ The Director of Public Prosecution shall exercise state powers of prosecution and may”

- a. institute and order the criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed”

Under sub Article (10) it is further provided:

“The Director of Public prosecution shall not require the consent of any person or authority for the commencement of criminal proceedings, and in the exercising of his or her powers or functions, shall not be under the direction or control of person or authority”

In view of these provisions I decline to grant the order to stay plea taking and any other proceedings in the aforementioned case. For, to do this will amount to supervising and or interfering with the work of other agencies

5 I wish to direct the applicants to proceed to take plea in the said case, then come and address this court on the substantive points of law and issuing of public interest that would require that case be referred to the Chief Justice for the constitution of a bench of uneven number of judges for hearing and determination of the petition filed herewith.

Ruling delivered, dated and signed this 14th day of December 2015

D. O. CHEPKWONY

JUDGE

In the presence of

Mr Muteti, Mr Wangila and Mr Wamotsa for the state

Mr Mwadzoga for the applicants

C/Assistant- Mr Kiarie