



REPUBLIC OF KENYA

HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO. 16 OF 2013

REPUBLICRESPONDENT

VERSUS

JOYCE WANJIRU MWAURA.....APPLICANT

LINUMARK INVESTMENTS LIMITED.....INTERESTED PARTY

DIAMOND SHIELD INTERNATIONALCOMPLAINANT

R U L I N G

1. The Applicant/Interested Party (hereinafter called the Interested Party), herein has come to court by way of a Notice of Motion under a Certificate of Urgency dated 5th September 2013, supported by the Affidavit of Jared Ouma Ochieng, the Managing Director of Linumark Investments Limited, the Interested Party.
2. The Application is brought under **Articles 40, 159** and **165** of the **Constitution**, and **Section 69** of the **Criminal Procedure Code**.
3. The Interested Party is seeking that the order of anticipatory bail issued to one Joyce Wanjiru Mwaure be discharged. The back drop to this application is that the applicant and the complainant obtained goods worth Kshs.38,000,000/= from the Interested Party in August 2012 for which there is a civil suit in Kisumu HCCC No. 161 of 2012.
4. The Interested Party has argued that orders for the anticipatory bail were obtained by material non-disclosure of facts and fraudulently so. That the applicant has declined to obey consent orders, granted on 30th October 2012 in **Kisumu HCCC no. 161** and **163** all of **2012**, and being in breach of court orders she ought not to enjoy the protection of the court. That in fact, the orders of anticipatory bail were obtained to avoid arrest.
5. In reply the Respondent who is the applicant in the main application has stated that the application before court is frivolous, and lacks merit. That the Interested Party has not demonstrated to this court that a clear criminal offence has been committed and investigations shown that the Respondent is liable to be prosecuted in a court of law with the offence of obtaining by false pretenses.
6. The Respondent also argues that it has not been shown that the investigations by Police have been

completed and that it's the Respondent who is frustrating the efforts by the investigators to have her charged with a criminal offence. Further that the Director of Public Prosecution has not been made a party to the proceedings herein, yet he is the one to recommend commencement of criminal charges against the Respondent.

7. In the Respondent's views the Interested Party's application cannot be allowed as prayed, and the court has been urged to find that the application lacks merit and is a complete abuse of the court process, as the orders prayed could only have been sought by the Director of Public Prosecution upon recommendation by the Police officers investigating the matter.
8. I have perused the submissions of both parties and find that there is nothing barring the Interested Party from taking the necessary steps in Kisumu HCCC 161 and 163 both of 2012 if the Respondent has disobeyed court orders entered into therein by consent or at all. The anticipatory bail was granted in anticipation of arrest in regard to criminal charges and is not a bar to processes taking their normal course in civil proceedings nor to the arrest and arraignment of the Respondent in criminal charges.
9. The record shows that the orders of anticipatory bail were granted a year ago on 13th February 2013 with the consent of the office of the Director of Public Prosecution. It has not been shown that the Respondent is using the cover of the said orders of anticipatory bail to evade arrest or frustrate prosecution by the Director of Public Prosecution in any way.
10. For the foregoing reason I find that the application dated 5th September 2013 brought by the Interested Party is lacking in merit and I dismiss it.

SIGNED DATED and DELIVERED in open court this 26th day of

February 2014.

L. A. ACHODE

JUDGE