



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
MISC. CRIMINAL CASE NO. 7 OF 2014

SIMON NJIRU APPLICANT

-VRS-

REPUBLIC.....RESPONDENT

RULING

SIMON NJIRU, the Applicant herein has filed a Notice of Motion dated 17th March 2014 asking this court for the following orders

- i. That the hearing of criminal case NO. 544/12 at Kerugoya subordinate court be stayed pending determination of Kerugoya High Court Criminal appeal NO. 4/2014.
- ii. Cost of the application.

The Applicant has listed five grounds in his application which grounds he also argued before me. The grounds are.

1. He has filed an appeal NO. 4/14 against a ruling of the subordinate court in criminal case NO. 524/12
2. That the subordinate court failed to grant him a stay of proceedings pending determination of his appeal.
3. That the validity of the charge sheet in the lower is under challenge and hence he should not be prosecuted.
4. That the lower court disobeyed a High court order ordering it to deal with the issues
5. That the lower court is prosecuting criminal case NO. 524/12 ignoring issues raised by accused in an application dated 8th July, 2013.

In his oral submissions before me at the hearing this motion, the applicant alluded that there is another succession case NO. 876/12 pending at Embu High Court where some orders were issued but the police disobeyed the same.

The Director of Public Prosecution through Mr Omayo opposed the application saying that the same is defective, ambiguous and non starter. He faulted the applicant for mentioning a defective charge sheet, a ruling dated 8th July, 2013 proceedings in the subordinate court but failed to annex any to his application for consideration by this court. The state also faulted the application for being strange in law. Mr Omayo

also contended that the ruling annexed by the Applicant in his application was taken out of context by the Applicant and he ought to have annexed proceedings leading up to the ruling.

The court has considered the arguments of the both sides and I have looked at the application which in my view is couched in a manner similar to a Civil Application both in style and character. A stay of proceedings and costs are reliefs sought mostly in civil proceedings but in view of the fact that the Applicant is unrepresented I will overlook the style he has chosen to present his application and consider his application on the merits.

The Applicant states that he has filed an appeal against a ruling of the lower court and has annexed a copy of the appeal which is an appeal NO. 4 of 2014. I agree with the state that this application ought to have been made on that appeal. There was no need for the Applicant to file this application through a Miscellaneous cause. However the choice by the Applicant to file his application through a Miscellaneous cause is not a sufficient reason that can be used to fault his application. The Respondent has pointed out other salient grounds which I consider relevant in determining the merits of the motion before me.

The Respondent has stated in the grounds filed in opposition that the application is brought under unknown provisions of the law. The Applicant has indeed not cited any and this court finds none under the **Criminal Procedure Code**. A civil court can order a stay of proceedings under Section 6 of the Civil Procedure Act but the same is not applicable in Criminal proceedings facing the Applicant. Criminal Procedure Code do not provide for a stay of proceedings and the only way the Applicant can ask for a relief in Criminal proceedings is to invoke the supervisory jurisdiction of this court under **Article 165(6)**.

The Applicant has not placed any material before this court to demonstrate he is deserving of this courts discretion in the exercise of supervisory powers over the subordinate court. The proceedings on the lower court have not been annexed to the motion presented. The Applicant has made a number of allegations of orders issued in the lower court for example ruling dated 23rd April 2014, 8th January 2014 and a succession cause in Embu High court NO. 576/02 but he has not exhibited any in his motion. Apart from that he has mentioned about defective charge sheet and an application dated 8th July 2013 apparently the subject of appeal but he has failed to annex copies of the same to enable this court decide on whether or not he is prejudiced in the criminal trial or that he has been subjected to unfair trial.

This court has looked at the ruling delivered by Honourable Justice Abuodha on 28th May 2013 which is annexed to the affidavit of the Applicant but the court has been deprived of issues or the application that the Judge was ruling on. The Applicant has failed to annex the application.

This court inquired from the Applicant about the ruling and the application and he appeared to miscomprehend the meaning of '*expediting a trial*' which means quick and efficient disposal of a case. The Applicant did not give clear explanation on the application that was the subject of the ruling of the Honourable Judge and I am unable to find any merit on his assertion that the ruling favoured a stay of trial in the lower court or finding of some issues.

I tend to agree with the Respondent that it would appear that the Applicant had made a similar application before the Judge who then ruled;

“The applicant’s interest will be served in expediting the trial than staying it “. If that is the case then the application before me is resjudicata and improperly before court.

The Applicant ought to have annexed copies of proceedings on the lower court and I find his allegations that he was denied the same unfounded. Any person by law is entitled to have copies of proceedings if he/she needs them. Under **Section 392 of Criminal Procedure Code** the Applicant is entitled to typed copies of ruling but he must pay for them. He has not demonstrated that he paid for the proceedings or wrote a letter requesting for the proceedings. He cannot therefore attribute his failure to place sufficient material before this court on anyone else but himself.

This court therefore finds that the application dated 17th March 2014 in view of the above is devoid of merit. It is dismissed.

R.K. LIMO

JUDGE

DATED, SIGNED DELIVERED AT KERUGOYA THIS 24TH DAY OF NOVEMBER, 2014 in the presence of

The Applicant

Mr Omayo for state

Mbogo Court Clerk