REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI LAW COURTS

Miscellaneous Criminal Application 72 of 2012

ALPHONCE KONDI RIAGA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The application before me is dated 8th February 2012. According to the Notice of Motion filed on 20th February 2012 the application is brought "pursuant to **Rule 20** of the **Constitution** of **Kenya** (Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual) High court practice and Procedure Rules 2006". It is not clear whether the applicant intended to bring the application under Article 20 of the Constitution which deals with the application of the Bill of Rights, or what **"Rule 20** of the **Constitution of Kenya"** refers to.

2. The grounds of the application as set out in the Notice of Motion and argued by Mr. Agina, learned counsel for the applicant, are that the applicant is the accused person in two cases to wit: **Milimani Law courts Chief Magistrate Criminal cases No. 975 of 2011 Republic vs Alphonse Kondi Riaga** and **1304 of 2011 R vs Alphonse Kondi Riaga** and **Cecilia Nzila Kirumo** respectively.

3. The learned counsel urged that in the two cases above, the applicant is charged with a total of 24 counts emanating from the same complainant who is, UNSACCO. That the trial of both those cases will take months if not years to conclude due to the magnitude of the cases, the witnesses involved and the documentation to be adduced. That the applicant is at risk of remaining in court for an inordinate period and incurring considerable, and unnecessary legal expenses which he can ill afford. He therefore seeks a declaration that the continued hearing of the two cases above on the basis of the indictment laid in the charge sheets is likely to contravene the provisions of the Constitution 2010 in relation to the applicant. The learned counsel does not disclose which provisions of the said constitution will be contravened.

4. He also prays for an order of prohibition directed at the chief magistrate to forebear from hearing the said cases on the basis of the indictments as laid.

5. The learned counsel submitted that the prosecution did not explain the criteria used to divide the 24 charges to come up with 12 charges in each file. He referred me to the decision in **Misc. Cr. 472 of 1996 Eliphaz Riungu vs Republic**, in which the court held that a person must not be embarrassed by the charges brought against him, must not be held in court for an inordinately long period, and must not be subjected to great expenses.

6. In opposing the application, the learned state counsel M/s. Kahoro relied on the replying affidavit sworn by Chief Inspector of Police Mr. Okwara. She urged that the offences in the first instance involved withdrawals from Account No. **220000/700** and were made in the name of Alphonse Riaga, even though the transactions were committed on different dates and involved different amounts of cash. The transactions in the second instance although similar in nature, concerned Account No. **2361383/009**.

7. The cases are therefore distinct from each other and were committed on different dates. In the opinion of the learned state counsel no prejudice would be occasioned to the applicant, and the applicant had not demonstrated the prejudice that would be occasioned nor how his rights have been violated. The learned state counsel further urged that the number of counts in each case is within the law, and that the prejudice would, in fact, be occasioned if the charges were combined. She further opined that the appellant's fears of delay are merely speculative and that the court would safeguard his rights during the trial.

8. The question to be answered is whether the interests of justice are likely to be better served by one very lengthy trial as urged by the applicant or by separate trials as has been urged by the respondent. The authorities cited in **Misc. App. No. 472 [1996] Eliphaz Riungu vs Republic,** (unreported), to which the appellant referred me are in fact against an overloaded indictment.

9. In the case of **Peter Ochieng vs Republic [1982-88] 1KAR 832,** the Court of Appeal observed that it was undesirable to charge a person with numerous counts, in one charge sheet which could lead to embarrassment and prejudice to the defence. That it may even lead to confusion in the prosecution and in the decision of the court. The Court of Appeal went on to observe that the prosecution should limit the counts in a charge sheet to only twelve.

10. In my humble view, if as the applicant contends, the magnitude of witnesses to be summoned and documents to be adduced is great, the more reason why the cases should be tried separately because the complexity arising there from, may lead to an unfair trial. I agree with the learned state counsel that the submission that the trial will be delayed if the cases proceed as laid as mere conjecture at this juncture.

11. In fact, in **Ochieng's case** (supra) the Court of Appeal observed that anything beyond 12 counts would be prejudicial even though there are no hard and fast rules as to the number of counts which may be carried in one case. In **Eliphaz Riungu** (supra) the Court of Appeal had this to say:

"We think that public interest demands that whatever goes on in a criminal trial should be in the interest of justice. And the constitution which is the mother of all laws clearly states that the accused shall be afforded a fair hearing within reasonable time. Justice demands that the guilty be appropriately punished and the innocent be let free. A long trial which is likely to lead into confusion of prosecution case as to result into acquittal of the guilty is certainly not in interest of public interest and justice".

12. For the foregoing reasons, I therefore find that the application before me is lacking in merit and decline to grant it. The application is dismissed.

SIGNED DATED and **DELIVERED** in open court this **13th** day of **June 2012.**

L. A. ACHODE

JUDGE