



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**MISC. APPLICATION NO. 115 OF 2011**

**KIPKOROS CHESIMET.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The applicant, **STANLEY KIPKOROS CHESIMET**, seeks orders to quash the charge sheet and proceedings in Criminal Case No. 61 of 2011. He also asks for orders to prohibit the Chief Magistrate's Court, Nairobi, from proceeding with the said case.

In that criminal case, the applicant has been charged with 5 counts, as follows;

- (1) ***Obtaining money by false pretences contrary to section 313 of the Penal Code;***
- (2) ***Giving false information to a person employed in the public service, contrary to section 129 (a) of the Penal Code;***
- (3) ***Obtaining registration by false pretences contrary to section 320 of the penal Code;***
- (4) ***Forgery contrary to section 349 of the Penal Code; and***
- (5) ***Forgery, contrary to section 349 of the Penal Code.***

It is the prosecution case that the Applicant and his co-accused, Cheruiyot Kiptoo, obtained KShs.1,150,000/- as a loan from Equity Bank by falsely pretending that the money held in the fixed deposit account in the name of the Applicant and Evaline Chesimet, was valid security for the said loan.

The Applicant and his co-accused are also said to have given false information to the Registrar of Births and Deaths, resulting in an amendment to entries in the death certificate of Samuel Chesimet.

Because of the alleged errors in the original death certificate, the Registrar of Births and Deaths was misled to issue another death certificate.

Furthermore, the Applicant and his co-accused are said to have forged the signature of Gladys Cherono in a consent for the "mode of distribution of Estate", as well as in the consent to the confirmation of grant.

As the applicant explained, the criminal charges emanated from the management of the Estate of the late Samuel Chesimet, where the Applicant and Evaline Chesimet were administrators.

It is the Applicant's case that the family of the deceased held a meeting at which they proposed that the Applicant and Evaline Chesimet should take out letters of administration. Thereafter, the 2 obtained letters of administration.

In the course of the discharge the function of an administrator, the Applicant (and his co-administrator) withdrew money from Barclays Bank of Kenya Limited, and placed a substantial portion thereof in a fixed deposit, at Equity bank.

Thereafter, the fixed deposit was offered as security to Equity Bank for a loan which the administrators obtained from the said Equity Bank.

The loan was used to purchase 2 vans, as an investment for the benefit of the beneficiaries. The Applicant emphasized that the money was not put to his personal benefit.

He believes that if there are any disputes about the manner in which the funds belonging to the estate of the late Samuel Chesimet were utilized, or even about the authenticity of either the death certificate or of the consents filed in the Succession Cause, those disputes ought to be resolved within that case.

It is the applicant's submission that the criminal charges have been preferred against him prematurely, because the Succession Cause was still ongoing.

He further submitted that the decision to charge him alone, excluding his co-administrator was discriminatory, and thus amounted to a selective application of the law.

In effect, the decision is said to have been made in bad faith, and for purposes that were not legitimate.

The Applicant believes that the criminal case was intended to expose him to ridicule, oppression and substantial expenses.

His view is that the criminal case was not intended to advance any public cause. Indeed, he is convinced that the criminal trial was in excess of the power conferred upon the Respondents.

He is also persuaded that the criminal proceedings constitute a violation of his freedoms and rights, as the decision to prefer the criminal charges was arrived at by improper and unfair decisions of the Respondents.

It is for those reasons that this court was invited to quash the charge sheet, and also to bar the magistrate's court from proceeding with the case against the Applicant.

In answer to the application, the 2<sup>nd</sup> Respondent filed an affidavit of Florence Mwikali, a police officer attached to the CID Headquarters, Nairobi.

Ms. Mwikali was the Investigating Officer in the criminal case. She disclosed that the complaint against the Applicant had been made by Evaline Chesimet, who had been the Applicant's co-administrator.

The complaint was that the Applicant had misled her to participate in the fraudulent acquisition of the letters of administrators. Evaline Chesimet also complained that the Applicant was intermeddling and misusing the estate.

Another complaint was lodged by Equity Bank, who said that they had lent out money on the strength of a security which was not valid.

When Ms. Mwikali carried out investigations, she ascertained that the Applicant and his co-accused had given false information to the Registrar of Births and Deaths, Bomet District. As a result, the Registrar issued a birth certificate, which formed the foundation upon which the Succession Cause was

mounted.

The police officer also ascertained that the letter nominating the Applicant and Evaline Chemiset, was a forgery. Apparently, all the family members had disowned the minutes of the meeting at which a decision was made to nominate the applicant and Evaline Chesimet.

Ms. Mwikali also established that the grant of letters of administration was confirmed after the Applicant presented forged consents. The said forgeries are said to be the work of the Applicant and his co-accused.

Of course, the Applicant and his co-accused are presumed, by law, to be innocent until and unless the prosecution proves beyond any reasonable doubt, that they are guilty.

If the applicant gave false information to the Registrar of Births and Deaths, that constituted a criminal offence.

Also, if the applicant obtained money or registration by false presences, those actions would constitute criminal offences.

It would not matter that the said criminal offences, if proved, were committed in furtherance of some civil proceedings.

The Applicant has not demonstrated that the Chief Magistrate's court lacks jurisdiction to hear and determine the criminal case.

He has also not shown that the said court had departed from the rules of natural justice.

Meanwhile, the police have made it clear that the decision to prefer criminal charges was made after investigations linked the Applicant to the alleged offences. It is the statutory duty of the police to carry out investigations when they receive complaints that criminal offences had been committed. In this case, there are 2 complainants.

And after the police conducted investigations, they found evidence that the Applicant and his co-accused had committed some offences.

As soon as the police established the culpability of the Applicant, they were under a duty to prefer criminal charges against him.

But why didn't the Police charge the Applicant's co-administrator? Can the decision to refrain from charging Evaline Chesimet be reason enough to conclude that there was discrimination against the Applicant?

At the moment, it appears that it is the said Evaline Chesimet who blew the whistle on the actions of the Applicant. She said that she was misled by the Applicant. She may well therefore be a witness for the prosecution.

In any event, if the Applicant is shown to have committed any criminal offence, the same would not be undone simply because one person had not been charged alongside him.

In the result, I find no reasons, in law or in fact, for granting any of the reliefs sought by the Applicant. Accordingly, the application is dismissed with costs.

**Dated, Signed and Delivered at Nairobi, this 25<sup>th</sup> day of October, 2011.**

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**FRED A. OCHIENG**  
**JUDGE**