

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET

Criminal Miscellaneous Application 13 of 2008

DORIS JEPKORIR MUGE:.....APPLICANT

VERSUS

REPUBLIC:.....RESPONDENT

RULING:

The Applicant herein Doris Chepkorir was charged before the Iten resident Magistrate's court with the offence of creating a disturbance in a manner likely to cause a breach of the peace contrary to section 95(1) of the Penal Code the particulars of which are that on the 11th day of March 2008 at Iten police station canteen in Keiyo district of Rift Valley Province, during a police recruitment exercise, created a disturbance in a manner likely to cause a breach of the peace by shouting and abusing sergeant Paul Kimiti a police officer covering the exercise calling him stupid a person who does not think. She also faced a second count of behaving in a disorderly manner in a police building contrary to section 60 (1) of the Police Act cap. 84 of the Laws of Kenya and the particulars are that on the 11th day of March 2008 at Iten Police Station Report and Inquiry office in Keiyo District of the Rift Valley Province she behaved in a disorderly manner by shouting and refusing to be placed in cells after having been arrested for the offence of creating disturbance.

While the case was proceeding in the said court the applicant came to this court and filed an Originating Notice of Motion under Rules 1 and 2 of the Constitution of Kenya (Supervisory Jurisdiction and Protection of the Fundamental Rights and Freedoms of the individual) High Court practice and Procedure Rules,2006 on the grounds that the attempted charge against the Applicant was presented to court after 6 days 3 of which the Applicant was detained in Police cells, the 2nd count facing the applicant is likely to lead to double jeopardy as the Applicant was charged and convicted (sacked) under the Police Act; the Applicant's constitutional and fundamental rights as per section 72(3) of the constitution was violated as she was not taken to court within 24 hours and finally that the Applicant was arrested manhandled by male police officers arresting her. The Applicant swore an affidavit in support of her application and stated that she was arrested for no apparent reason and detained in police cells and later on 13th March 2008 she was driven to Nairobi at night where she was handed a dismissal letter and brought back to Iten Police station and bonded and on 14/03/2008 she was granted a police cash bail to appear in court on 17/03/2008. On 17/03/2008 she was charged as stated in the opening parts of this Ruling. She deponed that she was held for longer than the stipulated 24 hours and hence her constitutional rights were violated. Her advocate Mr. Mitei at the hearing submitted that as the applicant was not taken to court within 24 hours of her arrest then the charge against her is a nullity and oppressive. He relied on the authority of **ANN NJOGU & 5 OTHERS –VS- REPUBLIC Misc. Criminal Application No. 551/2007.**

The application was opposed and David Nyabuto the investigating officer in the criminal case in Iten swore an affidavit and said that the applicant was arrested at 2:10 pm for creating a disturbance and committing an offence against discipline. Being a police officer herself the applicant had to go through disciplinary procedures as per the Police Act which were concluded on 13/03/2008 and she was released at 1:30 p.m and later escorted to Nairobi where she worked at Makongeni Police Station. She was dismissed from the Police Force and the deponent escorted her to Iten Police station and she was released

on a cash bail to attend court on 17/03/2008. He said this caused the delay but that the delay was not unreasonable.

It is not denied that the applicant was arrested on 11th march 2008 and underwent internal police disciplinary procedures until the 13th March 2007 when she was dismissed from the Police Force for indiscipline to wit being disrespectful in word, act or demeanor to an officer senior to her in rank and being guilty of an act to the prejudice of good order and discipline. It was after her dismissal that criminal charges were preferred against her. This was after being released on cash bail on 14th march 2008 and this the applicant admits. The averments of the affidavit by the investigation officer are not denied and that then means that the applicant was undergoing disciplinary process under the Police Act. The claim that she was held beyond time must therefore fail totally. This case is not in anyway similar to the authority quoted to court. It is not double jeopardy to answer to criminal charges after undergoing internal police disciplinary process. This application fails and the same is accordingly dismissed.

DATED AND DELIVERED AT ELDORET THIS 4TH DAY OF AUGUST 2009.

P.M.MWILU

JUDGE

IN THE PRESENCE OF:-

Mr. Koros for Mr. Limo for Applicant

Mr. Omutelema for the State

Mr. Chelanga Court Clerk.