



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**MISC. CRIMINAL APPLICATION NO. 81 OF 2002**

**ISAIAH NGOTHO WATHEKA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The application herein, dated 21/1/02 under Sections 135(1); 219; 365 (proviso) of the Criminal Procedure Code and Sections 70 (a); and 77(1) of the Constitution seeks the following orders:

**1. }**

**2. } .....Already spent**

**3. }**

**4. That the 200,000/- deposited with Kenya Post Bank by applicant's sureties as condition to the court registry accepting four different sureties be refunded to the sureties.**

**5. The charges in the five cases be struck out on the grounds that they are an abuse of the court process; statute barred; malicious prosecution of the accused and subjudice.**

**6. The charges be consolidated and heard as counts in one file.**

The application is on the grounds that: - the charges are statute barred – Section 219 of Cap. 75 - the respective charges infringe the sub-judice rules; the charges arise from the same transaction; the accused's fundamental rights to a fair trial under the constitution have been infringed; the existence of so many charges is an effort by the state to infringe on this court's orders of 30/1/01 by Justice Oguk and an effort to inconvenience and embarrass the accused on time and costs of the defence.

Having perused through the pleadings herein, and carefully considered the submissions by counsel for both the applicant – Mr. Kilukumi for the applicants and Ms. Nyamosi for the State, I rule that it is the right of every accused person to have a speedy and fair trial. In the instant case, the time taken towards that goal has been long too long and may lead to mental torture and mistrust of the aim of our judicial process.

Further, to charge the applicant with so many charges, which in my view, and from the Charge Sheet, are related, similar, against the same person, create unfairness in terms of the difficulties in adequate and

effective preparations for defence of the (accused) applicant.

Having made the above points, I have difficulty in the applicant's submission (the counsel) that mens rea is personal and cannot be said to exist in an administrator of a deceased's estate. The charges hinged on alleged violations of labour laws and the Regulations thereof. If the deceased would have been liable for the violation of the labour law provision – Cap. 229, Laws of Kenya, Section 15(2) it is difficult to see how his successor becomes immune.

Corporations, whether limited or not, think, move, and act through their directors or officials. They have no legs or minds or brains. If the liability to pay the wages herein was on the deceased, his death does not extinguish the rights of the employees whose rights were violated except, as is herein below, where there is a statutory limitation.

Counsel for the applicant submitted that the charges are statute barred and should be struck out. Looking at Section 15(2) of Cap. 229, Laws of Kenya, **Regulation of Wages and conditions of Employment**, the penalty imposed therein is a fine not exceeding 400/-. That being the case, the next relevant statutory provision is Section 219 of the Criminal Procedure Code, Cap. 75 Laws of Kenya, where for a fine which does not exceed 1,000/- the charge or charges, must be brought within 12 months. There is no doubt that under this provision, more than 12 months had elapsed before the applicant was charged.

Accordingly, the charges are statute barred and I hereby strike out the same. The Kshs.200,000/- deposited with the Kenya Post Bank by the applicants sureties to be refunded.

I would have looked at the issue of consolidation of the charges herein, but having held as I have done herein above that is academic.

DATED and delivered in Nairobi this 16th Day of May, 2005.

**O.K. MUTUNGI**

**JUDGE**