



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI  
MISC. CRIMINAL APPLICATION NO 596 OF 2001

HALIMA SEBIT MARJAN.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

On 28th august, 2001, Etyang J. granted the applicant leave to move the court for an order of prohibition directed at the Chief Magistrate's court or any other magistrate prohibiting the trial or proceedings in criminal case No. 1629 of 2001 are substantially similar to the applicant's case NBI HCCC NO. 1546 of 2000. If that be the case then the criminal proceedings are vexatious, harassing and abuse of the process of the court.

From the material before me, it is clear that the subject matter at the center of both the civil and criminal proceedings is a parcel of land Title NO. NBI/BLOCK 61/711. In the civil suit the applicant herein sued Moses Anangwe, Jeremiah Oduor and Dickson Ouma for a declaration that the said parcel of land belongs to her and that the defendants be evicted therefrom. The plaint is dated 19th September, 2000.

All the three defendants entered appearance and filed their defences. Paragraph 5 of the defence filed by the first defendant and paragraph 9 of joint defence of second and third defendants admitted the jurisdiction of the High Court to deal with the matter.

While the civil matter was still pending for hearing in the High court, a charge sheet dated 26th July, 2001 was filed against the applicant herein wherein she was charged with the offence of obtaining Registration by false pretence C/s 320 of the Penal Code Cap. 63 Laws of Kenya. The witness listed among others to be stated is one Moses Anangwe who is the first defendant in the Civil suit. It is not hard to see the hand of this party in the bringing the criminal proceedings complained of.

The two proceedings are so intertwined that they cannot co-exist at the same time without resultant injustice feared by the applicant.

I am able to say such an approach, with respect, is an abuse of the process of the court. Accordingly, an order of prohibition shall issue as prayed in the Notice of Motion dated and filed on 14th September, 2001.

There shall be no order as to costs.

Orders accordingly.

Dated and delivered at Nairobi this 28th day of November 2001

A. MBOGHOLI MSAGHA

JUDGE

Mr Gwaro for the applicant

Miss Mwaniki for the state

