

REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS**

MISCELLANEOUS APPLICATION NO 901 OF 2001

PAUL MWANGI NDERITU APPLICANT

VERSUS

THE PRINCIPAL MAGISTRATE, NAIROBI RESPONDENT

R U L I N G

This is an application for judicial review so that an order of prohibition may be granted to stop criminal proceedings in a subordinate court.

It is said that the criminal case is brought in order to pressurize the applicant into paying monies which must be ascertained after a reconciliation of accounts.

There is no evidence to show that this criminal case is not brought for the purpose of upholding the law but for oppressive purposes. On the contrary, it is the applicant who by this application, is seeking to pressurize the magistrate's court to abandon the exercise of its criminal jurisdiction in a matter in which it has legitimate jurisdiction.

The mere fact that there is a dispute about accounts between certain persons and an applicant should not be a basis for stopping the criminal process in a subordinate court. The mere fact that a matter which forms the subject of criminal proceedings carries with it a civil flavour, should not be a basis for stopping a criminal case. In some instances things civil may have a criminal angle to them. It is for a party saying that there is no crime committed to demonstrate that position before the criminal trial court. He can do so by bringing to that court the relevant law or the relevant facts, or by destroying the case made out against him by the prosecution, and generally by showing that the prosecutor has not discharged its requisite burden of proof beyond reasonable doubt, that he is guilty of the offence as charged. It is for the prosecutor to prove the accused's guilt unless the case is one of strict or absolute liability or otherwise an exceptional situation when the overall burden of proof is placed on an accused. But whatever the case, these are things to happen in the trial court.

I know that a person does not have to wait till the trial of a criminal case to get an acquittal. Sometimes such a waiting can be a terrible torment and can have one spend worrisome anxious moments. But the administration of the criminal justice in subordinate courts, should not be stifled, stultified and rendered moribund, by excessive interference with it by the High Court whenever there is a dispute about accounts or whenever there is a shout "This is civil!". In the instant case, the court does not find any undue pressure to submit. I find no abuse of the criminal process. I find no improper invocation of the criminal process. What is told to this court is legitimate argument in the subordinate court for that court's consideration.

The application is dismissed. It is so ordered, ex tempore .

R. KULOBA

JUDGE

10.12.2001

