



Gitau & 2 others v ODPP & 2 others (Criminal Miscellaneous Application E228 of 2024) [2025] KEHC 233 (KLR) (23 January 2025) (Ruling)

Neutral citation: [2025] KEHC 233 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL MISCELLANEOUS APPLICATION E228 OF 2024**

**JM NANG'EA, J
JANUARY 23, 2025**

BETWEEN

**PETER GITAU 1ST APPLICANT
VINCENT KIBAGENDI 2ND APPLICANT
MARY MUGURE 3RD APPLICANT**

AND

**ODPP 1ST RESPONDENT
OCS NAKURU POLICE STATION 2ND RESPONDENT
KRA 3RD RESPONDENT**

RULING

1. The Applicants seek release of a Plastic Molding Machine, files and official documents among other stated items the police seized purportedly to conduct some criminal investigations. The Applicants were later charged in court, and their plea for release of the properties was declined by the Respondents. The Applicants lament that the confiscated items are their tools of trade.
2. The Respondents oppose the application through the 3rd Respondent's Affidavit. They contend that the exhibits were lawfully seized and are to be used as evidence in the prosecution of the Applicants. The Respondents also brought to the court's attention that the Applicants had made a similar application before the trial court which was dismissed.
3. Having perused the application, the Respondents' reply and Counsel oral submissions, it is not in dispute that the trial court has heard the same application and declined to allow it for reasons *inter alia* that the items are exhibits before it and that some of them could be forfeited upon conclusion of the trial.



4. Without going into the merits of the application, I find that the same is an abuse of the court's process. If the Applicants were dissatisfied with the trial court's decision, the proper course of action was to file appeal and not bring the same application before this court.
5. The application is accordingly struck out for being an abuse of the court's process.

J. M. NANG'EA, JUDGE.

RULING DELIVERED THIS 23RD DAY OF JANUARY, 2025 IN THE PRESENCE OF:

The Prosecution Counsel, Ms Sang

Applicant's Advocate, Ms Kemunto for Mr. Mongeri

Applicants, All present

The Court Assistant, Jeniffer

J. M. NANG'EA, JUDGE.

