



**Abdullahi v Inspector General of Police & 3 others; Mburugu & another (Interested Parties) (Miscellaneous Criminal Application E026 of 2024) [2024] KEHC 7126 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7126 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
MISCELLANEOUS CRIMINAL APPLICATION E026 OF 2024**

**TW CHERERE, J  
JUNE 13, 2024**

**BETWEEN**

**ABDI ABDULLAHI ..... APPLICANT**

**AND**

**INSPECTOR GENERAL OF POLICE ..... 1<sup>ST</sup> RESPONDENT  
DIRECTOR OF CRIMINAL INVESTIGATIONS ..... 2<sup>ND</sup> RESPONDENT  
OFFICER COMMANDING TIGANIA POLICE STATION ..... 3<sup>RD</sup> RESPONDENT  
INVESTIGATING OFFICER ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**JOHNSON MBAABU MBURUGU ..... INTERESTED PARTY  
CATHERINE GAKII MBAABU ..... INTERESTED PARTY**

**RULING**

1. By notice of motion dated 29<sup>th</sup> April, 2024, Abdi Abdullahi (Applicant) prays for orders that:
  1. Conservatory order be issued restraining the Respondents, their servants, agents or officers from arresting, harassing or interfering with Applicant’s right to liberty
  2. Applicant be admitted to anticipatory bond pending arrest or charge
2. The application is based on grounds that Applicant is the registered owner of LR. Mbwa 1/1488/ Ruiru/1055 and 2613 over which the Interested Parties have lodged a complaint of forcible detainer and he is at risk of being arrested for a civil matter.



3. By his affidavit sworn on 13<sup>th</sup> May, 2024, CPL Kona the investigating officer handling the Interested Parties' complaint avers the complaint relates to land parcel MBWAA 1/3099 which Applicant has occupied without color of right and not LR. Mbwa 1/1488/Ruiri/1055 and 2613 and that the DPP has recommended that Applicant be charged.
4. In opposing the application, the Interested Parties have by an affidavit sworn by Johnson Mbaabu Mburugu (1<sup>st</sup> Interested Party) on 10<sup>th</sup> May, 2024 has annexed documents to support the investigating officer's averments that the investigations I issue relate to land parcel MBWAA 1/3099 and not any of the ones Applicant has addressed in his affidavit.
5. I have considered the application in the light of the affidavits and annexures on record.
6. In *Republic v Commissioner of Police & another Ex parte Michael Monari & another* [2012] eKLR , it was held as follows:

“Under Article 157(4) of the *Constitution*, the Director of Public Prosecutions shall have power to direct police to investigate any information or allegation of a criminal conduct and it is mandatory for the police to comply with any directions or instructions given by the Director of Public Prosecution. Under article 157(10) the Director of Public Prosecution shall not require the consent of any person or authority for commencement of criminal proceedings and shall not be under the direction or control of any person. It is also clear in my mind that the police have a duty to investigate on any complaint once a complaint is made. In deed the police would be failing in their constitutional mandate to detect and prevent crime. The Police only need to establish reasonable suspicion before preferring charges. The rest is left to the trial court. The predominant reason for the institution of the criminal case cannot therefore be said not to have been the vindication of the criminal justice. As long as the prosecution and those charged with the responsibility of making the decisions to charge act in a reasonable manner, the High Court would be reluctant to intervene.

7. Forcible Entry is an offence under section 90 of the *Penal Code*. In *Hussein Khalid and 16 others v. Attorney General & 2 others*, SC Petition No. 21 of 2017; [2019] eKLR the Supreme Court rendered itself as follows;  

[105] It is not in dispute that every statutory definition of an offence comprises ingredients or elements of the offence proof of which against the accused leads to conviction for the offence. Inevitably, proof or otherwise of elements of an offence is a question of fact and that largely depends on the evidence first adduced by the prosecution and where the accused is placed on his defence, the accused evidence in rebuttal. This in our view is an issue best left to the trial court as it will not only have the benefit of the evidence adduced but will weigh it against the elements of the offence in issue.
8. It is therefore not the duty of this court to go into the merits and demerits of any intended charges to be preferred against the Applicant. It is the function of the court before which the charge shall be placed and which shall conduct the intended trial to determine the veracity and the merit of any evidence to be tendered against the Applicant. It would be improper for this court to try and/or attempt to determine the intended criminal case which is not before it.
9. There is no evidence that the Respondents have exceeded their jurisdiction, breached rules of natural justice or considered extraneous matters or are actuated by malice in undertaking the investigations against the Applicant. The purpose of criminal proceedings is to hear and determine finally whether



the accused has engaged in conduct, which amounts to an offence and on that account is deserving punishment.

10. It is not automatic that once a person is charged with an offence (s) he/she must be convicted. The presumption of innocence remains paramount.
11. From the foregoing therefore, I find that the prayers in the application dated 29<sup>th</sup> April, 2024 are unmerited and they are disallowed.

**DELIVERED IN MERU THIS 13<sup>TH</sup> DAY OF JUNE 2024.**

**WAMAE. T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Kinoti

For Applicant - Mr. Mwangi for Arthur Ingutya Advocates

For Respondents - Ms. Rita Rotich (PC-1)

For Interested Parties - Ms. Mugo for Nyamu Nyaga & Co. Advocates

