



Mucheru v Director of Criminal Investigations & another (Miscellaneous Criminal Application E008 of 2024) [2024] KEHC 12601 (KLR) (Crim) (22 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12601 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E008 OF 2024
K KIMONDO, J
OCTOBER 22, 2024**

BETWEEN

KEERU MUCHERU APPLICANT

AND

DIRECTOR OF CRIMINAL INVESTIGATIONS 1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS 2ND RESPONDENT

RULING

1. The applicant first approached the High Court by a notice of motion dated 10th January 2024 seeking three principal reliefs:
 - c. [To restrain] the respondents from instituting fresh criminal charges and if new charges are preferred or dropped, the current charge sheet dated 26th September 2023 be amended appropriately;
 - d. [To direct] the 2nd respondent to consolidate all future criminal cases relating to the charges contained in the charge sheet dated 26th September 2023; and,
 - e. [To maintain] the bond terms set on 26th September 2023 as the operative bail and bond terms.
2. The applicant subsequently lodged another notice of motion dated 21st January 2024 containing fairly similar prayers, save to add that he sought to review the directions by the court granting a date for directions on 1st March 2024 and to be instead heard earlier. The Court declined the request and maintained the date for directions.
3. On the latter date, and correctly so, the applicant withdrew his earlier motion and argued the motion dated 21st January 2024. In this new motion, prayer (b) now sought to restrain the 1st respondent



“from arresting, charging afresh the applicant on any complaint similar to the facts in Milimani Chief Magistrates Court Criminal Case No E775 of 2023” [hereafter the criminal case or lower court case]. Prayer (c) was now for consolidation of any such fresh charges with the said criminal case while prayer (d) sought release of the applicant “on a police bond of Kshs 200,000 which was paid on 18th January 2024 at Kasarani Police Station”

4. From the supporting affidavit and the submissions by his learned counsel, Mr. Wesonga, the applicant is a director of a company. He or the company are being investigated on a number of complaints for the offence of obtaining money by false pretences. He has been charged on some of those complaints in the criminal case.
5. But more complaints are being lodged with the result that the applicant keeps on being re-arrested. He thus argues that his constitutional rights to liberty have been violated and that the subsequent complaints “are factually identical to the charges preferred in Milimani Chief Magistrates Court Criminal Case No E775 of 2023”.
6. He deposes that after attending a pre-trial conference for the lower court case on 17th January 2024, he was arrested and held at Kasarani Police Station. He was not informed of the reasons for his arrest and was only released the following day on a police bond of Kshs 200,000 notwithstanding that he had posted bail in the lower court in the sum of Kshs 10,000,000. He also avers that he was detained for over 32 hours in contravention of Article 49 of the Constitution.
7. The application is opposed by the Director of Public Prosecutions through Grounds of Opposition dated 5th June 2024. The pith of those objections is that the DPP followed the Decision to Charge Guidelines; and, that by dint of Article 157 of the Constitution, the office cannot be directed by any person or authority in the discharge of its functions.
8. On 16th September 2024, I heard further arguments by both learned counsel for the applicant and the respondents.
9. I take the following view of the matter. The criminal case in the lower court is pending for trial; and, there are new complaints lodged to the police by other persons. I thus decline the temptation to comment on the merits of those matters.
10. But I can safely state the following: It is apparent from the materials annexed to the motion that there are several and distinct complainants alleging that the applicant through his unnamed company has obtained monies from them under false pretences. One such case is the one proceeding in Milimani Chief Magistrates Court Criminal Case No E775 of 2023. It is important to emphasize that all those remain mere allegations for now. Paraphrased, under article 50 (2) of the Constitution, the applicant is still deemed innocent; and, is entitled to a fair trial.
11. In so far as there are multiple complaints by distinct victims over different sets of facts, it would be presumptuous to say that the fresh claims “are factually identical to the charges preferred” in the above case as urged by the applicant. Fundamentally, once the new charges are laid, it will be truly within the province of the lower court to determine whether they are suitable for consolidation and whether or not to combine bonds.
12. For the same reasons, I would be hard pressed to issue a blanket order to restrain the 1st respondent from “arresting the applicant on any complaint similar to the facts in Milimani Chief Magistrates Court



Criminal Case No E775 of 2023”. I am fortified in that finding by the express provisions of Article 245 (4) of the Constitution which provides as follows-

The Cabinet secretary responsible for police services may lawfully give a direction to the Inspector-General with respect to any matter of policy for the National Police Service, but no person may give a direction to the Inspector General with respect to— (a) the investigation of any particular offence or offences [Underlining added].

13. Furthermore, under Article 157 (10) of the Constitution, the DPP “shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority”. The only caveat is that he must have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process. I am not persuaded from the materials before me that the DPP has fallen into that exception.
14. I thus decline to restrain the 2nd respondent from preferring any fresh charges against the applicant.
15. Lastly, the applicant has raised serious allegations of being held in police custody without being presented to court within 24 hours decreed by Article 49 of the Constitution. I am not able to make a final finding on those claims within the narrow confines of the present motion. But I remain alive that if that be the case, it may give rise to a separate action for damages or compensation. I say that very carefully and obiter.
16. The upshot is that the entire notice of motion dated 21st January 2024 lacks merit and is hereby dismissed.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF OCTOBER 2024.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of-

Mr. Wesonga for the applicant instructed by Mackenzie & Wesonga Law Advocates.

Ms. Awino for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. Edwin Ombuna, Court Assistant.

