



Matker v Director General Immigration Services & 2 others (Miscellaneous Criminal Application E218 of 2022) [2023] KEHC 27518 (KLR) (Crim) (16 June 2023) (Ruling)

Neutral citation: [2023] KEHC 27518 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E218 OF 2022
DR KAVEDZA, J
JUNE 16, 2023**

BETWEEN

ISSACK EDIN MATKER APPLICANT

AND

DIRECTOR GENERAL IMMIGRATION SERVICES 1ST RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS 3RD RESPONDENT

RULING

1. The applicant filed the amended notice of motion pursuant Articles 19, 20, 21, 22, 25, 29 47, 49, 50 and 165 of the Constitution of Kenya, 2010 and section 123 of the Criminal Procedure Code, Cap 75 Laws of Kenya. The applicant prayed a number of prayers *ex-parte* which are already spent. In addition, he also sought that his passport which was confiscated by the respondents be released forthwith.
2. The averments made are that he applicant is a Kenyan citizen and holder of passport number CK5xxxx. He was arrested on 26th July 2021 by officers from the 1st respondent. He has never been charged with any offence. He was detained at Kilimani Police Station and the 1st respondent threatened to deport him.
3. In response, the Fiona Awour an officer at the Immigration department swore a replying affidavit dated 15th February 2023. The averments made were that the applicant was not illegally detained by the 1st respondent. That he was arrested and released on bond. It was alleged that he failed to honour the bond terms and the passport which was fraudulently obtained cancelled. That investigations revealed that he had been issued with the said passport after giving false information with regard to his identity. In the premises, it was prayed that the application be dismissed.



4. I have considered the application, the response and the applicable law. From the averments on record, the applicant has neither been charged nor convicted for any criminal offence related to the passport in issue. In addition, the 1st respondent has not produced any record to show that indeed that the applicant is culpable for the alleged irregularities they are alleging in their affidavit in response. As such, there is no evidence on record, to show that indeed the passport in issue was illegally obtained.
5. In the circumstances, I direct the respondents to release passport number CK5xxxx to the applicant Issack Edit Matker with immediate effect.

Orders accordingly.

conclusions

RULING DATED AND DELIVERED VIRTUALLY THIS 16TH DAY OF JUNE 2023

D. KAVEDZA

JUDGE

