



Salim v Inspector General of Police & 3 others (Criminal Miscellaneous Application E087 of 2021) [2023] KEHC 19306 (KLR) (20 June 2023) (Ruling)

Neutral citation: [2023] KEHC 19306 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL MISCELLANEOUS APPLICATION E087 OF 2021**

**A. ONG'INJO, J
JUNE 20, 2023**

BETWEEN

FAIZ MBARAK SALIM APPLICANT

AND

INSPECTOR GENERAL OF POLICE 1ST RESPONDENT

CHIEF MAGISTRATE, MOMBASA 2ND RESPONDENT

SULEIMAN ALI MOHAMED 3RD RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS 4TH RESPONDENT

RULING

1. The Notice of Motion application dated October 19, 2021 was brought under Certificate of Urgency and pursuant to Article 159(2)(c), 163(3)(a)(d)(ii), and 259(i) of the *Constitution of Kenya, 2010*, Section 79(a), 135(1), 204, 362 and 364 of the *Criminal Procedure Code*, Order 53 of the *Civil Procedure Rules* and under any other relevant provisions of the laws of Kenya.
2. The applicant seeks for the following orders from the Honourable Court: -
 1. That this application be certified as urgent and service hereof be dispensed with in the first instance.
 2. That the Honourable Court be and hereby pleased to issue an order of stay of proceedings in Mombasa Criminal Case No 1105 of 2017 and No 1304 of 2019 from hearing/prosecuting/issuing any ruling/judgment and or dealing in whatsoever pending the hearing and determination of the instant application accordingly.
 3. That the Honourable Court be and is hereby pleased to issue an order of injunction restraining and/or staying the 2nd Respondent (Trial Magistrate) from handling Mombasa Criminal Case



No 1105 of 2017 and No1304 of 2019 and from issuing further orders and directions pending hearing and determination of the instant application.

4. That the Honourable Court be and is hereby pleased to issue an order consolidating Mombasa Criminal Case No 1105 of 2017 and No1304 of 2019 and consequently proceed to dismiss/quash the same accordingly.
 5. That the Honourable Court be and is hereby pleased to order and direct that the 3rd Respondent do produce and/or avail all the cheques he is holding arising from the transaction between him and the applicant.
 6. That this Honourable Court be and is hereby pleased to issue any other orders it may deem fit in the circumstances.
3. The application was supported by grounds on its face and the supporting affidavit of the applicant, Faiz Mbarak Salim, sworn on October 19, 2021.
 4. On October 22, 2021, interim orders were granted by the court that there be stay of proceedings in Mombasa CMC Cr No 1105 of 2017 and 1304 of 2019 pending the hearing and determination of the application herein and that the Deputy Registrar to avail Mombasa CMC Cr No 1105 of 2017 for hearing on October 26, 2021.
 5. On October 26, 2021 when the matter came up, the court ordered for stay orders to apply to Cr Case No 1304 of 2019 as there was already a judgment in Cr Case No 1105 of 2017 and therefore, Cr Case No 1105 of 2017 was to be returned to CMC criminal registry for safe custody. This court finds that the prayer for consolidation of Mombasa Criminal Case No 1105 of 2017 and No1304 of 2019 has been overtaken by events.
 6. This court further finds that the prayer for the 3rd Respondent to produce and/or avail all the cheques he is holding arising from the transaction between him and the applicant is an issue that ought to be dealt with during the hearing/trial in Cr Case No 1304 of 2019. Prayer No 5 is therefore not allowed. Matter to go back to trial court for trial and determination. Orders accordingly.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS, THIS
20TH DAY OF JUNE 2023**

**HON. LADY JUSTICE A. ONG'INJO
JUDGE**

