



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL CASE NO. 39 OF 2016**

**LESIT J.**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**DAVID LENKAIDAYO.....1<sup>ST</sup> ACCUSED**

**CARLISTUS EKIDOR APALIA.....2<sup>ND</sup> ACCUSED**

**RULING**

1. The information in this case was filed in court on 17<sup>th</sup> May, 2016. The prosecution did not have the accused persons in court. The indication given to the court at the time was that the Prosecution Counsel was instructed to file the information before this court then request for a warrant of arrest for the persons named in the information as accused persons.
2. Ms Matiru, Learned Prosecution Counsel placed before the court a letter addressed to the Inspector General of Police, written by Independent Policing Oversight Authority (IPOA) dated 28<sup>th</sup> April, 2016. The letter seeks the assistance of the National Police Service to apprehend the two persons accused as per the information, who were described as Police Officers.
3. Ms Matiru stated that no action had been taken ever since. Counsel proceeded to apply for a warrant for the arrest of the two.
4. The court, after hearing the Prosecution observed that the request by the Prosecution was unusual but obliged the request for the orders of the arrest of the two subjects. Starehe DCI was to execute the same soonest.
5. The matter was mentioned severally between 7<sup>th</sup> December, 2016 and 1<sup>st</sup> March, 2017. On the latter date the court received SSP ALICE KIMELI, against whom this court had issued a warrant of arrest on 7<sup>th</sup> February, 2017 for failure to effect the arrest of the two subjects.
6. SSP Alice Kimeli explained to court under oath all the effects she and her officers had made in an attempt to trace and arrest the subjects. She informed the court that the warrant of arrest in issue was received by them on 19<sup>th</sup> May, 2016. She told the court that the very next day, the OCS Huruma Police Station informed her that the two officers had absconded duty as from 20<sup>th</sup> May, 2016 upon learning of the warrant of arrest. She narrated efforts made to trace the two in their home areas through the nearest police stations. She requested more time to trace the subjects.
7. This matter came up before me next on 7<sup>th</sup> April, 2021. The Prosecution informed the court that the subjects had not been arrested as yet and indicated that the office, meaning ODPP were still deciding what to do with the matter.
8. It has been four and a half years since the information in this case was filed. The information was not signed by the trial judge as there was no accused person before the court.
9. The Prosecution persuaded the court to issue a warrant of arrest and give them a short time within which to present the subjects to court.
10. It is clear the Prosecution has failed to keep their promise. The information as filed, is irregular since no person was presented to court to answer the information as an accused person.
11. In the meantime, this matter is reflected as pending in our record. That is wholly undesirable.

12. The Prosecution has failed to present the subjects to court to answer the charges therein. Litigation must come to an end. The Prosecution has had sufficient time to have the subjects tracked down, apprehended and presented in court to answer the charges. This file cannot remain open anymore, as that gives a false impression that it is pending before court; when it is in fact not pending as not all the parties are before it.

13. Having come to the conclusion, I have in this matter, I hereby strike down the information filed herein and order that this file be and is hereby marked closed.

**DATED AT NAIROBI THIS 4<sup>TH</sup> DAY OF MAY, 2021.**

**LESIT, J.**

**JUDGE**

**DELIVERED THROUGH TEAMS ON 4<sup>TH</sup> MAY, 2021.**

In the presence of:

Ms. Gichuhi for State

Both Accused Persons absent

**LESIT, J.**

**JUDGE**