



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC CRIMINAL APPLICATION NO. 67 OF 2010

ALICE GULENYWA JONATHANAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

1. On 16th April 2008, the applicant herein; Alice Gulenywa Jonathan and two (2) others were arraigned in court, charged vide, criminal case number 540 of 2008, in Chief Magistrate's Court at Makadara, with the offences; of forgery contrary to; section 350 of the Penal Code in the first count, and obtaining money by false pretence, contrary to section 313 of the Penal Code in count 2 and 3.
2. The applicant did not appear before court for plea, wherein on 4th August 2008, upon prosecution request, a warrant of arrest was issued. In the meantime, the applicant moved to the High Court vide Judicial Review Miscellaneous application number 287 of 2008.
3. On 11th June 2008, the applicant was granted leave by Hon. Justice Dulu to apply for judicial review, by way of certiorari to quash the proceedings in the said Chief Magistrate's court and applications numbers; 97 and 98 and/or apply for a similar order for prohibition of continuity of the criminal case in the Chief Magistrate's court.
4. The leave granted was to operate or apply as a stay of decision of the Respondent to arrest, charge and prosecute, her in relation to the criminal case. On 17th February 2010, the Judicial Review Miscellaneous Criminal Application file number 287 of 2008, was transferred to the Criminal division by Hon. Lady Justice (retired) Gacheche, and the matter assigned a criminal case number miscellaneous criminal application number 67 of 2010.
5. On 18th February 2010, the court ordered the application be served for inter-parties hearing. On 15th April 2013, the court was informed the State had struck out the applicant's name from the charge sheet in criminal case number 540 of 2008 and on 23rd April 2013, the applicant sought for a mention date for the parties to record a consent.
6. The matter was subsequently, mentioned on several occasions as the parties were still engaged in negotiations. However, on 5th February 2019, the applicant was not in court and an order was given that; summons be issued for her to appear in court; on 20th February 2019. On that date, she was not present and neither was her lawyer. A further mention date was fixed for 20th March 2019.
7. On 7th April 2019, a warrant of arrest was issued against the applicant. The subject warrant of arrest has been in force since then to date. In fact, the matter has been mentioned on more than ten (10) times for the last two years, to get information on the status of warrant of arrest.
8. This court became seized of this matter on; 31st May 2021 and realized that, there is no progress in the matter and it has been dormant, for long. It is against this background that; the ruling herein is informed.
9. In that regard, it is indeed clear that, despite issuance of several warrants of arrest, no efforts seem to have been made to arrest the applicant and bring her before the court. Be that as it were, the question that has to be asked is; why is the court looking for the applicant. Who filed the subject application? What was it seeking for?
10. From the history of the matter as aforesaid, it is the applicant who moved to court to stop the criminal prosecution and obtained stay orders. If the Respondents are aggrieved by the stay orders they move the court to vacate them. Indeed, the subject of the order issued in the judicial review matter is a criminal appeal number 540 of 2008. That case was filed about 13 years ago. Is that case still on going?
11. It is not surprising that the applicant has lost interest in this matter. In fact, as aforesaid, the record indicates that, the Respondent herein

had opted to withdraw her name from the criminal case.

In that case, the continuity of this matter is not serving the interest of justice. The court has no reasons whatsoever to keep “dead” or dormant files where the parties have lost interest, in the matter. I therefore order that the application herein be marked as “abandoned” and the file be marked as closed.

It is so ordered.

DATED DELIVERED VIRTUALLY AND SIGNED THIS 7TH DAY OF JUNE 2021

GRACE L. NZIOKA

JUDGE

In the presence of:

Ms Kibathi for the State

Edwin - Court Assistant

No appearance for the applicant