



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

MISC. CRIMINAL APPLICATION CASE NO.E.034 OF 2021

REPUBLIC.....APPLICANT

V E R S U S

GODAGANDENITE HEWAGAMAGE

ANURADHA SANJEEWA & 7 OTHERS.....RESPONDENTS

R U L I N G

1. The Application coming for consideration in this Ruling is the Notice of Motion dated 23/4/2021 seeking the following Orders:-

(i) THAT the Application be satisfied urgent (SPENT).

(ii) THAT the Court be pleased to stay the order for release of Exhibits (passports) before proper determination of this matter.

(iii) THAT this Court be pleased to make any other order that it may deem fit and just to grant.

2. The Application is premised on the grounds on the face of it and supported by the Affidavit of Sergeant Ruth Anzala in which it is deposed that the Respondents were arrested as suspects on 14/1/2021 and charged with the offence of being unlawfully In Kenya among other charges.

3. Further, that the Court dismissed the case under Section 89 of the Criminal Procedure Code without citing any reasons and further that the Trial Court did not disclose any specific clause relied on.

4. The Applicant was unable to serve the application upon the Respondents who are foreigners. The Application dated 23/4/2021 is brought under Section 49 (1) (f) (g) and (h) of the Constitution.

5. I have perused the original Court Record and I find that the Trial Magistrate did not give a conclusive order.

6. The Trial Court ordered that ***“the Accused Persons shall remain at liberty to either comply with Visa Registration in Kenya and/or leave the Country forthwith”.***

7. It is not clear whether the Accused Persons complied or left the Country.

8. This Court has powers under its Supervisory Jurisdiction in the Constitution and Section 362 of the Criminal Procedure Code to call for and examine any proceedings before the Subordinate Court to ensure its correctness.

9. The said Section states as follows: - ***“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”***

10. I find that the order issued herein lacks in certainty.

11. I set the said order aside and direct that the hearing of this case proceeds since the Accused Persons pleaded not guilty. The Passports should not be released since they are Exhibits.

12. The case to be heard by any other Court other than the Court which gave the order for release of the Passports.

Delivered, signed and dated at Kericho this 11th day of June, 2021.

A. N. ONGERI

JUDGE