



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

MISC. CRIMINAL APPLICATION CASE NO.E.026 OF 2021

JOHN CHERUIYOT.....1ST APPLICANT

BENARD KIRUI.....2ND APPLICANT

PHILEMON KIRUI.....3RD APPLICANT

V E R S U S

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

R U L I N G

1. The Applicants herein filed a Revision Application dated 9/2/2021 under Certificate of Urgency seeking the following orders:-

(i) THAT the matter be certified urgent and service be dispensed with in the 1st instance.

(ii) THAT pending the hearing and determination of this application, there be stay of proceedings in Kericho Criminal Case No. E.089 of 2020.

(iii) THAT this Court be pleased to call for and examine the record of the Criminal Proceedings in Kericho Criminal Case No. E.089 of 2020 for the purpose of satisfying itself as to the reasonability, correctness, legality or propriety of the ruling and order of the Learned Trial Magistrate dated 22/01/2021.

2. The ruling which necessitated this Revision Application stated as follows in part:-

“For reasons that the state believes in it’s charge as drafted to be legal and proper, then they deserve a hearing on the same whereas the defence remains with the option of applying it’s reservation as a defence mechanism thereto. The objection be and is hereby overruled”

3. The Application is based the grounds on the face of it and supported by the Affidavit of **PHILEMON KIRUI**, the 3rd Applicant in which it is deposed that the three Applicants were charged on 23/10/2020 in Kericho CMCC E.089 of 2020 with the offence of destroying crops of cultivated nature contrary to Section 334 (a) of the Penal Code CAP 63 Laws of Kenya.

4. It is further stated that the Applicants told the Investigating Officer that the said Estate of Cheruiyot Arap Soi is the subject of Kericho High Court Succession Cause No.5 of 2020 but they were keen to charge the three Applicants.

5. The supporting Affidavit further states that the charge sheet is improper, illegal and unconstitutional as it is drawn and presented by a body not mandated under the Constitution of Kenya 2010 to prosecute cases and further that charge sheet negates Article 157 of the Constitution of Kenya and Office of the Director of Public Prosecutions (ODPP) Guidelines on Decision to Charge, 2019 since the power to prosecute is vested upon the Office of the Director of Public Prosecutions (ODPP).

6. The Respondents opposed the Revision Application and filed grounds of opposition dated 10/3/2021 in which they stated that the signature and stamp of the Office of the Director of Public Prosecutions (ODPP) on the charge sheet is enough evidence that the decision to charge was made by the Office of the Director of Public Prosecutions (ODPP) and not the Police.

7. Further, that the Police 5 Form is a charge sheet and a document which is provided for in the National Police Standing Orders **APPENDIX**

70C – National Police Service Paralegal documents and it forms part of the statute hence it is a legal document which is drafted, signed and stamped by the Officer in Charge of Police Station as provided for in Chapter 27 Section 16 of the Police Standing Orders.

8. The parties filed written submissions which I have duly considered the Applicants submitted that the Police have no mandate to charge the Applicants as powers to prosecute are vested in the Office of the Director of Public Prosecutions (ODPP).

9. The Applicants further submitted that the charge sheet in Kericho Criminal Case No.E.089 of 2020 is unconstitutional as it violates guidelines promulgated by the Respondent on 28/7/2020.

10. The Respondent in their written submissions stated that the Constitution of Kenya vide **Article 157 (6) (a) and (b)** vests prosecutorial power in the Office of the Director of Public Prosecutions (ODPP) namely the power to institute and undertake any criminal proceedings against any persons before any court other than a court martial and further that by signing and stamping the charge sheet filed in court the Office of the Director of Public Prosecutions (ODPP) had approved the charge sheet.

11. Further, the Respondent submitted that the Police Form 5 is a charge sheet and a document provided for in the National Police Standing Orders to be used by Police Officers in charge of Police Stations as provided for in Chapter 27 Section 6 of the National Police Standing Orders.

12. The Respondent also submitted that there was no error in the face of the proceedings to warrant a correction by way of revision by this Court and further that the charge sheet complied with Section 134 of the Criminal Procedure Code CAP 75 Laws of Kenya.

13. The issues for determination in this revision application are as follows:-

(i) Whether there is any error apparent on the face of the record to warrant this Court to call for and Examine the record of the Trial Court.

(ii) Whether the order of the Trial Court should be reviewed.

14. On the issue as to whether there is any error on the face of the record to warrant a review of the Trial Court's order, I find that Trial Court was right in overruling the objection.

15. The Supervisory powers of this Court should not be used to micro manage the Trial Court but should only be applied in a situation where there is glaring illegality or which requires correction.

16. I find that the Applicants have a right to appeal after the trial and the said issue can be raised during the appeal.

17. The fact that there is a Succession Cause pending does not bar the Respondents from preferring charges against the Applicants if they suspect that a criminal offence has been committed.

18. I therefore find that there is no basis for reviewing the order of the Trial Court which overruled the Applicant's objection.

19. The Revision is accordingly dismissed and the file is referred back to the Trial Court to proceed with the hearing of the case.

20. Each party to bear its own costs of this Application.

Delivered, signed and dated at Kericho this 9th of July, 2021.

A. N. ONGERI

JUDGE