

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL MISCELLANEOUS APPLICATION CASE E214 OF 2021

CEPHAS YONGAI.....APPLICANT

VERSUS

THE NATIONAL POLICE SERVICE.....1ST RESPONDENT

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTION ...2ND RESPONDENT

RULING

By application dated 28.6.2021, brought under certificate of urgency, the applicant, **CEPHAS YONGAI**, basically pleads that the Respondents be ordered to release to the applicants the various items of the applicant taken away from the applicant's premises on 4.1.2021 and held at Kiamumbi police station. The applicant has sworn an affidavit detailing the various items taken away from the applicant. An inventory of the said items was duly attached to the affidavit.

The Respondents have responded to the application by a replying affidavit of one Simon Mutahi sworn on 12.7.2021. The Respondents, while admitting have taken away the said items have stated that the said seized items have since been released to the applicant on 6.1.2021.

The parties agreed that this court do rule on this matter based on the 2 affidavits. As it has turned out the 2 affidavits are a direct contradiction of each other i.e whereas, the applicant maintains that the ceased items have not been released, the Respondent has stated otherwise and showed the relevant OB number to confirm the same. The applicant has not disputed this fact.

The court has taken note of one other fact. That the inventory taken as the items were seized was signed by the applicant and witnessed by his wife. In the said inventory, the TV the applicant claims is not listed amongst the items taken away. The applicant has therefore not shown sufficient proof that he TV was one of the items taken from the residence of the applicant.

Considering the circumstances of this case as above, and particularly, the fact that the applicant has not controverted the Respondent's assertion that the seized items were released to the applicant on 6.1.2021 (Paragraph 10), I am not convinced that the applicant has sufficiently. Shown that the alleged items are still on the hands of the Respondents or their agents. In the circumstances, issuing the orders sought could be in vain. It is for this reason that the application of the applicant fails. I so find. The application dated 28.6.2021 is accordingly dismissed.

D. O. OGEMBO

JUDGE

13.10.2021.

Court:

Ruling read out in (on-line) in presence of Mr. Muchiri for applicant and Ms. Kimani for Akunja for the state.

D. O. OGEMBO

JUDGE

13.10.2021.