



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
(CORAM: CHERERE-J)
PETITION NO. E009 OF 2021
IN THE MATTER OF
ARTICLES 50 (1), (2)(a), 165(3) AND 258 OF THE CONSTITUTION
AND
IN THE MATTER
ARTICLE 47 (1) FAIR ADMINISTRATIVE ACTION
AND
IN THE MATTER OF
MERU CRIMINAL CASE NO. E721 OF 2021
AND
WAJIR CRIMINAL CASE NO. E379 OF 2021
REPUBLIC V JACKSON MUCHUI M'ITHARU

BETWEEN
JACKSON MUCHUI M'ITHARU.....PETITIONER
AND
THE DIRECTOR OF PUBLIC PROSECUTION.....1ST RESPONDENT
THE INSPECTOR GENERAL.....2ND RESPONDENT
THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

Background

- 1) Sometimes in 2015, a firearm was stolen from Wajir Police Station staff quarters. Subsequently, the firearm and some rounds of ammunition were recovered in Meru around April, 2021.
- 2) The Petitioner is charged vide **WAJIR CRIMINAL CASE NO. E379 OF 2021** with stealing the said firearm. In **MERU CRIMINAL CASE NO. E721 OF 2021**, Petitioner is charged with being in possession of the firearm, ammunition and preparation to commit a felony.
- 3) Petitioner prays for an order for consolidation of the two criminal cases whose subject matter is the firearm.

Analysis and Determination

4) I have considered the Petition in the light of the supporting affidavit and annexures thereto and oral submission by Ms. Maore for the Petitioner. I have also considered the Response by Ms. Mwaniki for the state to the effect that the OCS Kiirua Police Station that is investigating the case in Meru is not aware of the Wajir case.

5) In the case of **Muchanga Investments Limited vs. Safaris Unlimited (Africa) Ltd & 2 Others Civil Appeal No. 25 of 2002 [2009] KLR 229**, the Court of Appeal opined that:

“Judicial time is the only resource the courts have at their disposal and its management does positively or adversely affect the entire system of the administration of justice...”

6) There is no doubt that the main subject matter in both cases in issue is the firearm. I approve and adopt the principles so ably expressed by both *Lord Roskil* and *Lord Templeman* in the case of **ASHMORE v CORP OF LLOYDS [1992] 2 All E.R 486 at page 488** where *Lord Roskil* states:

‘It is the trial judge who has control of the proceedings. It is part of his duty to identify crucial issues and to see they are tried as expeditiously and as inexpensively as possible. It is the duty of the advisers of the parties to assist the trial judge in carrying out his duty. Litigants are not entitled to the uncontrolled use of a trial judge’s time. Other litigants await their turn. Litigants are only entitled to so much of the trial judges’ time as is necessary for the proper determination of the relevant issues.’

7) I am persuaded that both **MERU CRIMINAL CASE NO. E721 OF 2021** and **WAJIR CRIMINAL CASE NO. E379 OF 2021 REPUBLIC V JACKSON MUCHUI M’ITHARU** can be tried together to avoid wasting judicial time and resources as well as prevent the Petitioner and witnesses from incurring huge costs in such unwarranted participation.

8) It is therefore hereby ordered THAT:

1) Proceedings in WAJIR CRIMINAL CASE NO. E379 OF 2021 REPUBLIC V JACKSON MUCHUI M’ITHARU are hereby stayed

2) WAJIR CRIMINAL CASE NO. E379 OF 2021 REPUBLIC V JACKSON MUCHUI M’ITHARU be and is hereby transferred to Meru Chief Magistrate’s Court for consolidation with MERU CRIMINAL CASE NO. E721 OF 2021 REPUBLIC V JACKSON MUCHUI M’ITHARU

DATED AT MERU THIS 04TH DAY OF OCTOBER 2021

WAMAE.T. W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For Petitioner - Ms. Maore instructed by G.M.Wanjohi & Co. Advocates

For 1st and 2nd Respondents - Ms. Mwaniki instructed by The DPP