



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC CRIMINAL APPL E443 OF 2021

MARY WAMBUI MUNGAI.....1ST APPLICANT

EVERLINE NYAMBURA MUNGAI2ND APPLICANT

PURITY NJOKI MWAU.....3RD APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. By an application dated; 3rd December 2021, the applicants moved the court under the provisions of; article 22(1), 23, 29 (a) and 165 of the Constitution of Kenya, 2010, and sections 39, 123, and 24 of the Criminal Procedure Code, seeking for orders as here below reproduced.

a) That, the Honourable Court be pleased to grant the applicants anticipatory bail or bond prohibiting the Respondents from arbitrarily effecting their arrest and

b) That the Honourable Court be pleased to issue any further or other orders it deems just and fit.

2. The application is based on the grounds thereto, and an affidavit sworn by Eveline Nyambura Mungai, the 2nd applicant herein, sworn on her own behalf, and on behalf of the other applicants. In a nutshell, she avers that, she and the 3rd applicant are former directors of a company known as; Purma Holding Limited. The 1st applicant is still a director of that company. That, there is an on-going audit in the Company. However, the deponent has been receiving calls threatening to arrest her and charge her in relation to the on-going audit.

3. That, the court had earlier issued orders vide High Court MISC CR APPL NO E207 OF 2021 restraining the Respondent from arbitrarily arresting the applicants and the file closed. However, they are apprehensive, that, they might be arrested and arraigned in Court. That, such arrest will infringe on their constitutional rights. The deponents aver that, they are ready and willing to abide with any conditions that, may be given.

4. However, the Respondents opposed the application and informed the court that, the 1st and 3rd applicants have since been charged vide the chief Magistrates Anti-Corruption Court No. MCCAC E028 of 2021. As such, the application has been spent and/or overtaken by events as it relates to those applicants. That, the 1st and 3rd applicants were not in trial Court and a warrant of arrest was issued, therefore, they should avail themselves in that Court and seek for bail or bond.

5. In response, the applicants conceded to the matters in the Chief Magistrate's Court, but argued that, the Respondents should make a formal response. In the meantime, prayer (2) be granted.

6. I have considered the application in the light of the materials before the court and I find that, the main prayer left of the application is prayers (3). Basically the applicants are seeking to be shielded from arbitrary arrest. The Court has been informed that, the 1st and 3rd applicants have already been charged. In that case, the grant of the prayer (3) as it relates to the 1st and 3rd applicants will be superfluous and will defeat the administration of justice, in that, the Court is informed, there is a warrant of arrest against them. The grant of bail will thus serve as a stay of that warrant of arrest. That will be traversity of justice. Therefore, I find the application is spent and/or overtaken by events.

7. I further note that, this matter has been in this court before. It is an abuse of the Court process when the court issues orders and the parties act in total disobedience thereof. The Respondents should indicate its position regarding the 2nd applicant. It should be clear whether the Respondents are still pursuing her after the orders granted vide HC MISC. CR APPL. NO. E 207 of 2021. If the orders were flouted then, the applicants did not have to file another application, but, should have filed an application for contempt of Court. I therefore order this file

closed. The applicant should pursue further rights under the HC MISC CR APPL No. E207 of 2021.

It is so ordered.

DATED DELIVERED VIRTUALLY AND SINGED ON THIS 14TH DAY OF DECEMBER 2021.

GRACE L NZIOKA

JUDGE

In the presence of:

Mr Manyara holding brief for Mr Osoro for the applicant

Ms Sigei & Ms Thongori for all Respondents for the Respondent

Edwin Ombuna – Court Assistant