

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.887 OF 2018

REPUBLIC.....APPLICANT

VERSUS

A I O.....RESPONDENT

RULING

The Respondent, Arafat Ikumu Omar is facing a raft of charges before the Chief Magistrate's Court at Milimani. They range from **forgery** contrary to **Section 350** of the **Penal Code** to **being found in possession of a firearm without a firearm certificate** contrary to **Section 4(1)** of the **Firearm Act**. The Respondent pleaded not guilty to the charges. Trial is yet to commence. In the course of investigations, the police seized several properties that were found in the Respondent's residence. They include several motor vehicles and documents. They also recovered cash in various currencies. Some are alleged to be fake. Some of the recovered items are subject to the charges brought against the Respondent. Some of the items, it is alleged by the Applicant, are subject to further investigations to determine whether they are proceeds of crime or were procured in furtherance of criminal activities. The Applicant has continued to detain the said properties pending respectively, production in court and conclusion of investigations. The Respondent did not agree with the position taken by the Applicant. He did not challenge the items that were being held by the police and were the subject of the charges. Indeed, he does not object to the Applicant holding the said items with a view to producing them as exhibits in evidence during trial. Where he has an issue are items that the Applicant is holding which he claims have no connection whatsoever with the charges that were laid against him. The Respondent was of the opinion that there was no legal basis upon which the police could continue to hold the said items which were completely unrelated with the charges that were laid against him. The Respondent was not persuaded that the police were holding the said items with a view to aiding its further investigations. It was in that regard that the Respondent successfully filed an application to have the seized items that were not the subject of the charges that were brought against him to be released to him without further ado. The Applicant was aggrieved by the decision of the trial court which was rendered on 5th November 2018. The Applicant challenged the decision of the trial court requiring the police to release the detained items because it was of the view that such release would prejudice the ongoing trial before the trial court and further, would prejudice further investigations that were being conducted. This court stayed the orders issued by the trial court pending the hearing of this application. For completeness of record, the Respondent filed a Replying Affidavit in opposition to the application. In essence, the Respondent was saying that the court should uphold the decision of the trial court and order the seized items that were not the subject of the charges to be released to him.

During the hearing of the application, this court heard oral rival submission made by Ms. Nyauncho for the Applicant and Mr. Sifuna for the Respondent. This court has carefully considered the said submission and takes the following view of the matter. As stated earlier in this ruling, the Respondent does not dispute that there are certain items that are subject to production as exhibits before the trial court. There are other items however, which the prosecution indicated in its earlier application before the trial court that it was investigating whether the said items were proceeds of crime or were procured as a result of criminal activities. Having perused the trial court's record, this court does not want to prejudice or to render opinion in respect to the trial that is pending before the trial court. Suffice for this court to state that the Applicant should prepare an inventory of the items that it seized from the Respondent and indicate which item will be produced in respect of which charge that has been laid against the Respondent. If the Applicant forms the view that some of the items would be subject to further investigations, this court grants the police thirty (30) days to conclude its investigation and decide whether or not to charge the Respondent. There are certain items that are not registered in the Respondent's name. The police will be required to establish a nexus between the said items and the commission of crime within thirty (30) days of the delivery of this Ruling. If they shall not do so and lay appropriate charges before the court, then the said items shall be released to the registered or equitable owners.

This matter shall be mentioned on 17th September 2019 before this court for further directions. Either party shall be liberty to apply if there shall be any developments before that date. It is so ordered.

DATED AT NAIROBI THIS 18TH DAY OF JULY 2019

L. KIMARU

JUDGE