



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**PETITION NO. 5 OF 2019**

**ARMSTRONG AOLL PINO RAJUL.....PETITIONER**

**VERSUS**

**THE DIRECTOR OF PUBLIC PROSECUTIONS.....1<sup>ST</sup> RESPONDENT**

**KENYA POWER AND LIGHTING COMPANY.....2<sup>ND</sup> RESPONDENT**

**CPL FELIX MUTAI.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. The application dated 4<sup>th</sup> April 2019 is made by **KENYA POWER LIGHTING & CO. LTD** (The 2<sup>nd</sup> Respondent) who seeks to be struck out in proceedings **Eld. CMCRC No. 465 of 2017** saying there is a misjoinder of party.

The application is premised on grounds that:

- a) Police action cannot be blamed on the 2<sup>nd</sup> Respondent (Kenya Power & Lighting Company) who had no control over their actions as regards investigations and arrest.
- b) There was a genuine or reasonable basis for complaint made by the 2<sup>nd</sup> Respondent.
- c) There is no evidence that the prosecution terminated in the petitioner's favour to warrant a case of malicious prosecution.
- d) The 2<sup>nd</sup> Respondent stands to suffer irreparably unless the suit is struck out.
- e) The application is brought without undue or inordinate delay.

2. In the supporting affidavit sworn by **EMILY KIRUI** (the 2<sup>nd</sup> Respondent's legal officer) – she deposes that the petitioner (**ARMSTRONG AOL PINO RAJUL**) instituted the suit against the Respondents seeking stay of proceedings in **CMCRC No.465 of 2017** on allegations of malicious prosecution.

3. In January 2018, the petitioner was arrested at his house, for involvement in a transformer vandalism in Eldoret. The police upon conducting investigations and a search recovered two blocks of copper wirings and 20 litres of transformer oil belonging to KPLC – so there was a genuine and reasonable basis for the complaint.

The petitioner is faulted for failing to demonstrate that the Respondents in setting the criminal process in motion were propelled by malice, and there is even no demonstration that the petitioner was wrongly prosecuted for a primary purpose other than that of carrying the law into effect.

4. That there is no evidence that the prosecution was terminated in the petitioner's favour to warrant a case of malicious prosecution, and action by the police cannot be blamed on that 2<sup>nd</sup> Respondent who had no power over the police.

5. The application was canvassed by way of written submissions where the applicant argued that the decision to prosecute a criminal matter is made by the Director of Public Prosecution (DPP) as merited under Art 157 of the Constitution, and it is wrong to join the 2<sup>nd</sup> Respondent (who was the complainant in the criminal proceedings) as a party thereto.

6. The applicant confirms that it has no control over the actions of the police and **DPP** regarding criminal prosecution. Further that the **DPP**

(1<sup>st</sup> Respondent) and **CPL FELIX MUTAI** (3<sup>rd</sup> Respondent) are agents of the State who are generally employed to perform state functions as far as criminal matters are concerned. That the two work independently of the applicant, and interdependent to the applicant, in ensuring that suspected criminal are brought to book and charged accordingly.

7. Furthermore, that **KPLC** is a private company which is incorporated to perform a completely difficult function and the 1<sup>st</sup> and 3<sup>rd</sup> Respondents can't be its agents. That consequently, the decision to prosecute the petitioner informed by their own powers after conducting investigations, and the applicant ought to be disengaged from the proceedings as it is not a principle of either.

8. In opposing the application the petitioner argues that the 2<sup>nd</sup> applicant is the owner of the vandalized transformers, and its officer made a report about the vandalization to police – thus prompting police to act – so it has an interest in the matter. Citing the decision in **SAMUEL MURITHI WATATUA V REPUBLIC, Misc . Cr. Appl No.185 of 2012** where the court observed that the owner of property in question ought to be part of such proceedings.

It is contended that if the applicant had not reported the matter to police the criminal proceedings would never have taken place. That the proceedings were initiated by the State on behalf of the applicant and the orders that will issue will affect the applicant, and it is in the interest of justice that the applicant be enjoined in the matter.

9. The 1<sup>st</sup> Respondent is also opposed to the applicant being struck out of the suit saying being the victim of the petitioner's alleged mischief, whose property was vandalized, it must participate in the proceedings in the magistrate's court. That without the applicant's participation, the trial court might not understand the genesis of the criminal matter.

10. From the submissions presented it is clear that if the applicant had not reported then there would be no criminal proceedings in the trial court. All the arguments raised here amount to placing the cart before the horse, and the applicant must be a patient cart.

All the details raised here are best argued at the hearing before the trial court and I find no reason to disengage or de-link the applicant from the proceedings. The application has no merit and is dismissed.

**DATED, SIGNED and DELIVERED** at **ELDORET** this 1<sup>st</sup> day of October 2019.

**H. A. OMONDI**

**JUDGE**