

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL REVISION CASE NO. 243 OF 2018

SAMUEL KIPRONO TERER.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. **Samuel Kiprono Terer** was arraigned before the Magistrate's Court on the 29th day of **March, 2016** having been charged with three (3) Counts:

Count I: Conspiracy to Defraud contrary to **Section 317** of the **Penal Code**. Particulars of the offence were that between 15th day of **February, 2016** and 17th day of **February, 2016** at **Industrial Area Remand Prison** within **Nairobi County** jointly with others not before Court conspired to defraud **Jeremiah James Mwendwa** of his Motor-vehicle registration number **KBW 506Q Toyota Passo** valued at **Kenya Shillings Three Hundred and Fifty Five Thousand (Kshs. 355,000)**.

Count II: Forgery contrary to **Section 345** of the **Penal Code** as read with **Section 357(a)** of the **Penal Code**. Particulars of the offence were that between 17th day of **February, 2016** and 22nd day of **February, 2016** in **Nairobi County** jointly with others not before Court without lawful authority and with intent to defraud fored a certain **NIC** cheque leaf No. **000081** of **Western (k) Safaris** into a bankers cheque of **Kenya Shillings Three Hundred and Fifty Five Thousand (Kshs. 355,000)** purporting it to be a genuine bankers cheque issued by **NIC Bank Harambee Avenue Branch Nairobi** to **Jeremiah James Mwendwa**.

Count III: Obtaining Goods by False Pretences contrary to **Section 312** of the **Penal Code** as read with **313** of the **Penal Code**. Particulars of the offence were that on the 22nd day of **February, 2016** at **Kefri Offices in Kitui Central** within **Kitui County** jointly with others not before Court with intent to defraud and by false pretences obtained from **Jeremiah James Mwendwa** Motor-vehicle registration number **KBW 506Q Toyota Passo** valued at **Kenya Shillings Three Hundred and Fifty Five Thousand (Kshs. 355,000)** by falsely pretending that cheque leaf number **000081** dated 22nd **February, 2016** in the name of **Jeremiah James Mwendwa** was a genuine **NIC** Bankers Cheque for purchase of the said Motor-vehicle a fact he knew to be false.

2. He was produced from **Industrial Area Prison, Nairobi** to answer the charges that he denied.

3. By a letter dated the 16th day of **April, 2016** he sought revision of the matter on grounds that he has been remanded since the 1st day of **April, 2015** and while in custody he received alerts from **NIC Bank** that his cheque leaves had been used in criminal activities. Following the Court order he was taken to the police station where he lodged an official complaint. Investigations in the matter were commenced by **Mr. Maanyara** of Kikuyu Police Station.

4. Subsequently, he was produced in Kitui Court following malicious allegations. This, according to him was an infringement of his constitutional rights.

5. By the time the Lower Court file was brought up, it turned out that on the 20th day of **April, 2017** the State sought to withdraw the case under **Section 87(a)** of the **Criminal Procedure Code** which the Applicant (Accused) did not oppose. Consequently the matter was terminated pursuant to the provisions of the **Section** alluded to that provides thus:

“In a trial before a subordinate court a public prosecutor may, with the consent of the court or on the instructions of the Director of Public Prosecutions, at any time before judgment is pronounced, withdraw from the prosecution of any person, and upon withdrawal—

(a) if it is made before the accused person is called upon to make his defence, he shall be discharged, but discharge of an accused person shall not operate as a bar to subsequent proceedings against him on account of the same facts;”

6. The Applicant was discharged before evidence was tendered by the Prosecution. He may be arrested and prosecuted if there is evidence against him on the same facts. It will be therefore premature for this Court to determine if the action taken against him was an infringement of his constitutional right.

7. In the premises there is nothing to prompt me to act pursuant to the provisions of **Section 362** as read with **Section 364** of the Criminal Procedure Code.

8. It is so ordered.

Dated, Signed and Delivered at Kitui this 18th day of September, 2018.

L. N. MUTENDE

JUDGE