



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS APPLICATION NO.146 OF 2016**

**PARINAZ FIROZI.....1<sup>ST</sup> APPLICANT**

**E-CART SERVICES LTD.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

The Applicants, Parinaz Firozi and E-Cart Services Ltd were charged with a raft of charges under the **Occupational Safety and Health Act 2007**. The charges were six in number. At the time the Applicants were arraigned before the trial magistrate's court they requested that the taking of plea be deferred as they were in negotiations with the prosecution with a view to resolving the dispute that led to the charges being brought against them. Plea was later taken and the Applicants denied the charges. It is apparent from the record of the trial court that the negotiations were successful. The Applicants complied with what was required of them under the **Occupational Safety and Health Act 2007**. On 22<sup>nd</sup> March 2016, the prosecution sought to have the charges brought against the Applicants withdrawn under **Section 87(a)** of the **Criminal Procedure Code**. The Applicants did not have objection to the withdrawal of the charges. The court however declined the prosecution's request to withdraw the charges. The court was of the view that no basis had been laid in law by the prosecution to withdraw the charges that were brought against the Applicants. The Applicants were aggrieved by this decision and moved to this court to have the same revised.

At the hearing of the application, Ms. Atina for the State conceded to the application. She submitted that whereas the trial court was entitled to interrogate the reasons put forward by the prosecution in seeking to withdraw the charges, in the present case, the trial court had no reason to reject the prosecution's application to withdraw the charges under **Section 87(a)** of the **Criminal Procedure Code**. Mr. Adogo for the Applicants welcomed the concession by the prosecution. Under **Section 87(a)** of the **Criminal Procedure Code**, the prosecution may apply to withdraw charges against an accused person provided the court consents to it. In the present application, it was apparent to this court that the basis upon which the Applicants were charged was their non-compliance with the statutory requirements under the **Occupational Safety and Health Act 2007**. From the submission made by the prosecution, it was evident that the Applicants had complied with the said statutory edicts at the time the prosecution sought to withdraw the charges. There was no basis therefore upon which the prosecution could have proceeded with the charges. The trial court, in the considered view of this court, erred when it rejected the prosecution's application to withdraw the charges under **Section 87(a)** of the **Criminal Procedure Code**.

For the above reasons, this court finds the application for revision lodged by the Applicants merited. The order issued by the trial court on 22<sup>nd</sup> March 2016 rejecting the prosecution's application to withdraw the charges under **Section 87(a)** of the **Criminal Procedure Code** is hereby set aside and substituted by an order of this court allowing the prosecution's application to withdraw the charges against the Applicants. In the premises therefore, the charges against the Applicants are hereby withdrawn under **Section 87(a)** of the **Criminal Procedure Code**. It is so ordered.

**DATED AT NAIROBI THIS 2<sup>ND</sup> FEBRUARY 2017**

**L. KIMARU**

**JUDGE**