

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CR. APPLICATION NO. 51 OF 2017

BIDUAYA MULAMBA PAUL.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

I state that this ruling also applies to Misc. Cr. Application No. 52, 53 and 54 of 2017, the files having been consolidated. In a writ of habeas corpus, the remedy sought is for the production of the disappeared persons, dead or alive.

Files No. 51 and 52 of 2017 were the first to be attended to on 27/02/2017. Suffice it to note, the court was made aware of the existence of files No. 53 and 54 of 2017 and the four files were to be heard today.

In file No. 51 and 52 of 2017, the court directed for the production of the subjects in court today after being informed that they were being held at Pangani Police Station. It was also brought to the attention of the court of the order of the CS, Ministry of Interior and Coordination of National Government Hon. Maj. Gen (RTD) Joseph Nkaisery dated 20/02/2017 declaring the subjects prohibited immigrants.

The scenario as obtained on 27/02/2017 has changed. It is complicated by the twist in the circumstances that the subjects have already been deported. I entirely agree with the Applicant's counsel that orders of a court should be obeyed. But this being a habeas corpus application, the court cannot issue an order in vain. That is why before a final order is issued, the application itself takes the form of an inquiry. The inquiry as at today reveals that the subjects have been deported. Therefore, there are no persons to produce. And as submitted by the Respondent's counsel, the respective applications have been overtaken by events in the circumstances.

What follows from then is the question of whether the Respondent disobeyed the court order. This is a matter that can only be decided on merit after the court is moved. I am unable to make any findings on this question now, because certainly, if the court is moved, the evidence adduced will determine the outcome of the application.

That said then, I find that the respective applications have been overtaken by events. Any other action shall be determined by the Applicants themselves.

DATED AND DELIVERED THIS 1ST DAY OF MARCH, 2017

HON. GRACE NGENYE-MACHARIA

JUDGE

In the presence of:

1. Mr. Bosire for the Applicant

2. M/s Aluda for the State