



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
CRIMINAL REVISION CASE NO. 355 OF 2017

REPUBLICAPPLICANT

VERSUS

HANIA SAID SAGAR

LUUL ALI TAHLIL

NASTEHO ALI TAHULIL

ZAMZAM ABDI ABDULAHI.....RESPONDENTS

RULING

This is a ruling in respect of a matter which came before me for mere directions vide a letter from the office of the director of Public Prosecutions dated 8th March, 2017 and addressed to the Deputy Registrar, High court Mombasa and the Executive Officer, Shanzu Law courts.

This letter was placed before me on the 10th March, 2017 whereby Mr. Wamotsa, counsel for the state and Mr Magolo, counsel for the 2nd to 4th Respondents appeared. And because counsel for the 1st respondent, Mr Aboubakar and Mr Chacha had not been served with the letter and were therefore not in court. I issued directions that all the parties appear before me on 13.3.2017 at 3.00pm for consideration and directions in respect of the request by the Director of Public Prosecution in the letter dated 8th March, 2017.

On 13th March, 2017, the counsel for the Applicants appeared before me and what was a mere matter for directions, because an argument where various provisions of the Constitution and statute were cited . I patiently listened to all the counsel who were only passionate in their arguments.

The letter under reference dated the 8th March, 2017 is addressed to two (2) Judicial Officers, being the Deputy Registrar High court of Mombasa and the Executive Officer, Shanzu law courts. The two offices are a creation of the Constitution of Kenya,2010

By virtue of Article 172 (1) of the Constitution, it is provided that;

“The Judicial Service commission shall protect and facilitate the independence and accountability of the judiciary and the efficient, effective and transparent administration of justice and shall-

Article 172 (1) (c)

“Appoint, receive complaints against, investigate and remove from office or otherwise discipline registrars, magistrates, other judicial officers and other staff of the judiciary in the manner prescribed by an Act of parliament.”

The Magistrate’s Jurisdiction Act, 2015 at part III deals with Administration of the magistrate’s court.

Section 11 (1) of the said Act appoints an Administrator in accordance with Article 172 (1) whereby the Judicial Service Commission is tasked with staffing judicial positions.

By virtue of sections 11(2) the Administrator appointed pursuant to that section in accordance to the Constitution is answerable to the Chief Registrar .

The Chief Registrar works through Registrars and Deputy Registrars who are spread all over the courts in the country so that the work of that office is efficiently and effectively carried out.

By virtue of section 12 of the Magistrate’s Jurisdiction Act, the Administrator has functions and among them, the

“facilitation of the enforcement of the magistrate’s court”

(b) The acceptance, transmission, service and custody of documents in accordance with the rules of court”.

The High court is assigned with a Deputy Register who performs similar functions as the Administrator of affairs of the High court.

So that, once a request such as the one contained in the letter dated 21st February, 2017, is presented, he directs the staff under that office to carry out the functions.

Reading through the letter from the Director of Public Prosecutions dated 8th March, 2017, in its first paragraph, the same is couched in the following words;

“The 30 days within which the High court directed the Director of Public Prosecution to file a record of appeal before the court of appeal now depends upon the question of supply of the typed proceedings and ruling by yourselves to the Director of Pubic Prosecution”

I wish to state that this is not the correct presentation of the orders of this court. There are no orders where this court directed the Deputy Registrar and the Executive officer to comply with the supply of the typed proceedings and ruling within a certain time frame to enable the Director of Public Prosecution file the appeal. And neither has this court varied its own orders to place the filing of an appeal on the availability of the typed proceedings and ruling.

The second paragraph in the said letter is expressed as follows;

“We are yet to be supplied with these records as ordered by the court Consequently we are involuntarily unable to comply.”

This is again not correct as there is no order made by this Honourable court directing the officers addressed to in this letter to supply the typed proceedings and ruling.

The last paragraph again picks up the erroneous information above these lines:

“The purpose of this letter is to urge your esteemed officers to avail these records as directed”

This line is not correct as well as there is no such order on record directed at the said judicial officers. The request for the extension of time is not based on candid correct premises. The offices addressed could

not comply within a day to accomplish what they have not done in 30 days.

The reason for the delay, if any was supposed to have been communicated to this court by the Deputy Registrar and Executive Officer as requested in this letter of 8th March, 2017.

I have not seen any explanation from the two officers as to why they have not had the proceedings and ruling typed for onward transmissions to the Director of Public Prosecution .

And even if the court had the mandate to inquire into the matter, the circumstances now arising from the correspondence and the arguments make it impossible as any order made by this court would amount to reviewing its own order whereas it has ceased jurisdiction.

The supervisory jurisdiction of this court is donated by Article 165 of the Constitution of Kenya, 2010 and it provides as follows;

“The High court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising juridical or quasi judicial function, but not over a superior court”

From the language in the above provision of the Constitution, persons appointed to serve in their general administration of justice, without deciding rights of parties or adjudicating, do not fall under this category and therefore this court cannot compel an officer or discipline such an officer where such an officer who is directly answerable to the Chief Registrar fails to perform a lawful duty conferred by statute and the court.

The remedy to an affected party lies elsewhere and not from this court.

This court decided this matter in its revisionary jurisdiction and by the provision of section 361 (7) as read with section 361(8) (a), it was rendered “functus officio”

These must always be exhaustion of jurisdiction and litigation as a means of protecting the rights of subjects as enshrined in the Constitution.

This also protects the dignity of the court so that confidence in the justice system is upheld and those who go to court then feel secure. The hands of this court are tied by section 361 (7) which provides;

“For purpose of this sections and order made by the High court in the exercise of its revisionary by jurisdiction or a decision of the High court on a case stated, shall be declared to be a decision of the High court in its appellate jurisdiction”

The upshot of my above reasoning is that this court’s hands being so tied, the court seized with the matter may be directed accordingly by the orders made on 9th February.2017.

It is so ordered.

Ruling read, signed and dated this 14th day of March 2017.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/s Ocholla holding brief for Mr Wamotsa

Mr Aboubakar for 1st Respondent

Mr Magolo for 2nd -4th respondent