



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION

CRIMINAL REVISION NO.279 OF 2015

(An application arising out of a Ruling delivered on 23rd November 2015 in Nairobi Chief Magistrate's Court Criminal Case No.2425 of 2015)

DIRECTOR OF KALP LTD.....1ST APPLICANT
THE DIRECTOR OF STARPLAST LTD.....2ND APPLICANT
THE DIRECTOR OF DYNAMICS CHEMICALS LTD.....3RD APPLICANT

VERSUS

ECONOMIC AND COMMERCIAL CRIMES

UNIT CID HEADDQUARTERS.....RESPONDENT

RULING

On 23rd November 2015, Corporal Andrew Odeyo, an investigator based at the Economic and Commercial Crimes Unit of the Criminal Investigation Department filed an application in court seeking several orders in respect of a parcel of land registered as LR. No. 209/8921 Nairobi (*herein referred to as the suit property*). From the Affidavit sworn in support of the application, it was apparent that the officer was investigating *inter alia* claims of fraudulent transfer of shares, conspiracy to defraud and stealing by the directors of the Applicant companies. Upon hearing the exparte application, the Chief Magistrate made the following orders:

“Now therefore I authorize:-

- 1. The Chief Land Registrar Ministry of Lands Ardhi House to temporary restrict any transfer of ownership, dealing and other transactions on the same parcel of land LR. No.209/8921 Nairobi until the matter is investigated heard and determined.***
- 2. The directors of Kalp Limited, Starplast and Dynamic Chemicals Limited to stop any transaction or dealing in relation to the said land parcel No.209/8921 Nairobi. “***

The Applicants were aggrieved by this order. By an application dated 7th December 2015 made pursuant to **Sections 362, 364 and 365** of the **Criminal Procedure Code**, they sought orders of this court to call for the records of the Chief Magistrate's Court with a view to examining the legality and the appropriateness of the orders made against the Applicants. They further sought the order of the court to

quash the restrictive orders that were issued in respect of LR. No.209/8921 Nairobi and the order made against the directors of the Applicant companies. The Application is supported by the annexed affidavit of Violet Ong'ayi. The application is opposed. Corporal Andrew Odeyo swore a replying affidavit in which he explained the circumstances under which he sought the orders that are being sought to be impeached by the Applicants. In essence, he deponed that he was still investigating the matter in dispute and in the circumstances therefore the court should disallow the application sought by the Applicants.

During the hearing of the application, this court heard oral rival submission made by Mr. Kurgat for the Applicants and Ms. Atina for the State. According to Mr. Kurgat that the orders sought by the Applicants were not maintainable in law because the Chief Magistrate's Court did not have jurisdiction to issue the orders that were sought by the Respondent. Learned counsel submitted that the application sought to criminalize issues which were essentially civil in nature. He submitted that the application was not made in good faith and was meant to obtain information from the Applicants to assist one of the parties in a dispute concerning the shares of a limited liability company. Ms. Atina for the State replied by arguing that there was sufficient justification for the police to investigate a complaint which had been made by one of the shareholders of the original company who had indicated that his shares had been fraudulently transferred and subsequently thereafter his shareholding in the parcel of land that is the subject of the case had been diluted. She submitted that there was *prima facie* evidence that there were fraudulent transactions whose sole intent was to deprive the original shareholder of his shares in the suit parcel of land. It was her case that the police were entitled to seek the orders sought in the application to preserve the subject matter of the investigation pending the conclusion of investigations. She urged the court to dismiss the application.

That this court has jurisdiction to hear the present application is without doubt. **Section 362** of the **Criminal Procedure Code** grants this jurisdiction to call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself of the correctness, legality and propriety of any finding, sentence or order made by that court. In the present application, the Applicants challenged the order that was granted by the Chief Magistrate's Court essentially stopping any transaction in respect of the suit parcel of land pending investigations and further orders that may ensue thereafter. Mr. Kurgat submitted that under **Section 118** of the **Criminal Procedure Code**, the magistrate's court did not have power to stop any land transaction because land was not a thing capable of being seized and taken before court with a view to having the court dealing with it in accordance with the law.

Ms. Atina submitted that the Chief Magistrate's Court had jurisdiction to grant the orders that were issued because if the suit property was not preserved then it would defeat the purpose of investigations being conducted. Having carefully read **Sections 118** and **121(1)** of the **Criminal Procedure Code**, it was clear to this court that the definition that Mr. Kurgat gives to that which is capable of being seized is restrictive. Land *per se* is not something that can be physically seized. What can be seized are the title documents of the particular parcel of land whose ownership is under investigation. This court agrees with Ms. Atina that it would defeat the entire purpose of investigations if transactions which are suspected to be fraudulent are left to continue while the police are conducting investigations. This court cannot find fault with the application made by police to preserve the ownership status of the suit property pending conclusion of investigations and any other orders that may subsequently be issued by the court. As to the Applicants' claim that an essentially civil matter was being criminalized, this court does not agree with the Applicants. The scope of criminal activity that can arise from a civil transaction is not limited. The police have jurisdiction to investigate any complaint that is lodged with it with a view to ascertaining whether or not a criminal offence has been committed. In the present application, it was clear to this court that the police were justified in seeking the orders that were granted by the Chief Magistrate's Court.

This court however notes that investigations cannot go on for an indefinite or indeterminate period. The Respondent is ordered to conclude investigations in respect of the complaint lodged regarding the subject matter of this application within ninety (90) days of today's date. Within this period, the Respondent shall determine whether or not it has been established that a crime has been committed, and if so, by whom. If no one shall be charged within the said ninety (90) days as a result of the investigations, the orders granted by the Chief Magistrate's Court shall stand automatically discharged and vacated. It is so ordered.

DATED AT NAIROBI THIS 5TH DAY OF JULY 2016

L. KIMARU

JUDGE