

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.157 OF 2016

MARTIN GACHARE WANJOHI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Martin Gachare Wanjohi applied to this court seeking for orders to postpone the taking of plea before the magistrate's court which had been scheduled for 15th August 2016. The Applicant further sought for an order of the court to restrain the Respondent from ***“purporting to exercise authority, from causing the arrest of the Applicant in relation to the charges now before this subordinate court.”*** The application is supported by the grounds stated on the face of the application and the affidavit sworn by the Applicant. From the said application, it emerges that the Applicant is one of those accused in relation to the alleged theft of Kshs.791 million from the National Youth Service. The Applicant claims that he was not involved in the alleged theft, and that his role was restricted only to giving financial advice to some of his co-accused in the case. The Applicant is concerned that if he is charged, his reputation as a financial adviser will be harmed, and further that he will not be able to raise bail that will be prescribed by the trial court.

In that regard, the Applicant, with his co-accused, challenged the decision by the Director of Public Prosecution to charge them. They filed a constitutional application seeking to have the charges brought against them quashed. The application was heard and determined by Onguto J in **Republic –Vs- Director of Public Prosecutions & Another Exparte Patrick Ogola Onyango & 8 Others [2016] eKLR**. At the material part of the judgment, the Learned Judge had this to say:

“164. The DPP did not, in my view, misunderstand the law with regard to money laundering to be accused of having acted irrationally and unreasonably. Secondly, in my view, the DPP has not abused the powers of his office and neither has he acted unconstitutionally.

165. In the result, I hold that these are not appropriate applications where the judicial review powers may be invoked as no procedural impropriety has been shown and neither was the impugned decision to charge the applicants with the offence of money laundering wanting in both reason and merit on the face of the facts tabled before the court. As has been previously in this judgment pointed out, the court ought to ordinarily interfere with the exercise of the DPP's prosecutorial powers only in exceptional circumstances. Where the exercise shocks and is detrimental to the proper administration of justice and warrants intervention the court will interfere. But the court should exercise reticence and not second guess the DPP where it is clear that the motive is to perform the function of his office pursuant to the constitutional and statutory provisions and mandate.”

The Applicant was aggrieved by this decision. He has filed notice of his intention to appeal against this decision to the Court of Appeal. Undaunted, he made an application before the trial court seeking essentially to stay proceedings in that court pending the hearing and determination of the appeal. In that regard, the Applicant invoked the Court of Appeal decision of **Dr. Alfred Mutua –Vs- Ethics & Anti-Corruption Commission (EACC) & 4 Others [2016] eKLR** in support of his application. The application was opposed by the DPP. The trial court dismissed the application hence provoking the

application before this court.

The issue for determination by this court is rather straight forward. *Has the Applicant placed sufficient grounds before this court to stay or to stop the proceedings before the trial magistrate's court?* The answer to that question is in the negative. A court of concurrent jurisdiction has ruled that the Applicant's constitutional right to fair trial has not been breached or infringed. That decision has been appealed to the Court of Appeal. That court has not stayed the giving effect of its judgment pending the hearing and determination of the intended appeal. Neither has the Applicant obtained orders of stay from the Court of Appeal. As it is, there is no order impeding the trial magistrate's court from proceeding with trial.

That is the reason why this court dismissed the application on 12th August 2016. This court had reserved the giving of reasons for the said dismissal of the application. It is so ordered.

DATED AT NAIROBI THIS 9TH DAY OF SEPTEMBER 2016

L. KIMARU

JUDGE