



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**MISC APPLICATION NO. 235 OF 2014**

**PASKAL IMBINDA OMAMO ..... 1<sup>ST</sup> APPLICANT**

**MICHAEL KAGOMA MAINA ..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**COMMISSION OF ADMINISTRATIVE JUSTICE ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... 2<sup>ND</sup> RESPONDENT**

**INSPECTOR GENERAL OF POLICE ..... 3<sup>RD</sup> RESPONDENT**

**INDIPENDENT POLICING OVERSIGHT AUTHORITY .... 4<sup>TH</sup> RESPONDENT**

**HON. THE ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

Before this court is the Chamber Summons dated 25/2/2015 in which the **COMMISSION ON ADMINISTRATION OF JUSTICE** (hereinafter referred to as the 1<sup>st</sup> Respondent) seeks the following orders:-

***1. THAT this Honourable Court be pleased to strike out the name of the 1<sup>st</sup> Respondent namely Commission on Administrative (SIC) Justice from the proceedings***

***2. The costs of this application be borne by the 1<sup>st</sup> and 2<sup>nd</sup> Applicants”***

The genesis of this matter is the application (Petition) filed in the High Court in Nakuru by **MICHAEL KAGOMA MAINA** (the 2<sup>nd</sup> Applicant) on behalf of **PASCAL IMBINDA OMAMO** (the 1<sup>st</sup> Applicant) alleging breaches of fundamental rights of the 2<sup>nd</sup> Respondent by the police. The Application named the Commission of Administrative Justice as the 1<sup>st</sup> Respondent.

The application was disposed of by way of written submissions. The 1<sup>st</sup> Respondent readily admits that the applicants came to their offices to make their complaints against the Kenya Police and the Office of the DPP in their handling of **Nakuru CMCC No. 119 of 2013**. There is evidence by way of annexed letters that the 1<sup>st</sup> Respondent did act and wrote to the office of DPP seeking a reaction to the allegations.

The officer of the DPP failed to respond despite several reminders.

At all times the 1<sup>st</sup> Respondent kept the applicants informed of what efforts they were making to have the issue resolved. The 2<sup>nd</sup> Respondent in his submissions to court readily concedes that the 1<sup>st</sup> Respondent did write to him and kept him informed of the progress of their enquiries.

Failing to get any reply from the office of the DPP the applicants moved to court. By so doing they made it impossible for the 1<sup>st</sup> Respondent to continue to pursue the matter. Section 30(c) of the Commission of Administrative of Justice Act prohibits the 1<sup>st</sup> Respondent from investigating or pursuing matters which are already in court.

The Applicant who are lay persons appear to be labouring under the misapprehension that the 1<sup>st</sup> Respondent failed in their duty since the Office of DPP did not respond to persistent enquiries over the matter. In the contrary I find that the 1<sup>st</sup> Respondent did all that they were obliged to do under their mandate. They received the complaint from the applicant, wrote to the DPP (six letters in total) to make enquiries, sent several reminders and at all times kept the applicants updated on their actions. There is not much more the 1<sup>st</sup> Respondent could have or indeed was required to have done.

Understandably the applicants are disappointed that the enquires made by the 1<sup>st</sup> Respondent did not yield positive results but in no way can this be attributed to the 1<sup>st</sup> Respondent. As the matter is now before the court, I do agree that the 1<sup>st</sup> Respondent no longer has any legal mandate to continue enquiring into the matter. Their decision to hold the matter in abeyance awaiting the court's decision is correct. As such it served no purpose to enjoin the 1<sup>st</sup> Respondent in this petition. Indeed the applicants seek no specific prayers (orders) as against the 1<sup>st</sup> Respondent. There is no reason to retain the 1<sup>st</sup> Respondent as parties in this application as there is no prayer seeking to have it directed to do or to desist from any act.

I therefore find the present application has merit. In order to enable the court determine the real issues in contention and in order to not to cloud the issues, the first Respondent ought to be removed from these proceedings. The 1<sup>st</sup> Respondent is an office mandated to handle complaints made by all citizens against public or state bodies. It carries out an essential and important mandate and undoubtedly had several complaints to deal with. It would be a waste of the commission's time and resources to have it tried down in defending suits which ought not in the first place to have been filed against them. Therefore I do allow this application. The 1<sup>st</sup> Respondents name is hereby struck out from this application. The hearing to proceed as against the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, & 5<sup>th</sup> Respondent. No orders on costs.

**Dated in Nakuru this 7<sup>th</sup> day of November, 2016.**

Applicants in person

**M. Odero**

**Judge**

**7/11/2016**