



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.37 OF 2015

ALEX MAUTIA MORUME.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Alex Mautia Morume, the Applicant herein, has been charged with six (6) counts of **obtaining money by false pretences** contrary to **Section 313** of the **Penal Code**. The case is pending before the **Nairobi Chief Magistrate's Court in Criminal Case No.927 of 2010**. On 24<sup>th</sup> September 2014, the trial court rejected the Applicant's application that sought that he be acquitted since the complainants had not attended court on the day the case was fixed for hearing. The Applicant was aggrieved by this decision. He filed an appeal challenging the said decision on 8<sup>th</sup> October 2014. On 4<sup>th</sup> February 2015 he filed the present application under **Section 362** of the **Criminal Procedure Code** seeking this court's orders to stay the proceedings before the Chief Magistrate's Court pending the hearing and determination of the appeal. The main ground in support of the application was that if the Chief Magistrate's Court proceeded with the hearing, his appeal would be rendered nugatory. The State did not file any papers in opposition to the application. However, during the hearing of the application, Ms. Wario for the State made oral submission opposing the application.

In his submission before court, the Applicant reiterated the contents of his application together with supporting affidavits. He stated that he had been prejudiced by the constant adjournments that were granted by the trial court at the behest of the prosecution. He recalled that at one point, the trial court had granted the prosecution a last adjournment. During the next hearing date, the prosecution again applied for an adjournment which the trial court readily granted. The Applicant was of the view that his constitutional right to fair trial was infringed by the trial court's reluctance to acquit him despite the fact that the complainants had failed to attend court on various occasion despite being given opportunity to do so. Ms. Wario for the State submitted that there were no grounds which were put forward by the Applicant which would make this court exercise its discretion in his favour to stay the proceedings before the trial magistrate's court pending the hearing and determination of the appeal. She urged the court to dismiss the application.

This court has carefully considered the submission made by the parties to this application. The application is predicated on **Section 362** of the **Criminal Procedure Code** which grants this court jurisdiction to call for and examine the record of the criminal proceedings before a magistrate's court with a view to satisfying itself as to its correctness, legality or propriety of any finding, sentence or order. **Section 362** of the **Criminal Procedure Code** does not grant this court jurisdiction to stay criminal proceedings pending before a subordinate court. To that extent the Applicant's application is incompetent. However, for completeness of record, this court will address some of the issues raised by the Applicant in this application. The Applicant states that the trial court failed to acquit him despite the fact that the same court had granted the prosecution a last adjournment during the previous occasion when the case had been listed for hearing.

This court has taken notice of a worrying trend that appears to be taking root in the conduct of criminal proceedings. Of late, accused persons are aggrieved by interlocutory rulings made during trial are making

applications before this court seeking to invoke this court's revisionary powers under **Section 362** and **364** of the **Criminal Procedure Code**. The purpose of such applications, ultimately, is to frustrate the hearing and conclusion of the criminal case facing such accused persons. The result of such application is that criminal proceedings before subordinate courts are delayed thus infringing the constitutional principle set out in **Article 50(2)(e)** of the **Constitution** that requires trial to begin and conclude without unreasonable delay. It appears that any small issue that an accused person is aggrieved with results in an application being made to the High Court. This is irrespective of whether the ruling made has a bearing at all towards the finding of guilt or otherwise of such an accused person. This court is of the view that such practice must stop. The trial courts must be given an opportunity to conduct the trial to its conclusion without interference from the High Court unless the issue in dispute is so fundamental that it will impact the fair trial of the case. The present application is an example of such applications that are brought by accused persons with the sole intention of frustrating the criminal trial facing them. This court will not exercise its discretion in favour of such accused persons.

In the premises therefore, the application herein lacks merit and is hereby dismissed. It is so ordered.

**DATED IN NAIROBI THIS 2<sup>ND</sup> DAY OF JULY 2015**

**L. KIMARU**

**JUDGE**