



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: GACHUHI, OMOLO & LAKHA, JJ. A)

CRIMINAL APPLICATION NO NAI 2 OF 1995

BETWEEN

PATRICK PADDY OOKO.....APPELLANT

AND

REPUBLICRESPONDENT

(Application for leave to file and serve notice of appeal out of time in an intended appeal from a ruling of the High Court of Kenya at Nairobi (Patel, J) dated 17th November, 1994

in

H. MISC. CR. APPEAL NO 538 OF 1994)

RULING

This is a reference under rule 54 of the Rules of this Court (the rules) from the decision of a single Judge (Shah, JA) in which he refused to grant an extension of time to file a notice of appeal from the dismissal by the superior court (Patel J) of an Application to have the applicant's complaint heard by a constitutional court..

The applicant had been arrested and charged before the Chief Magistrate's Court on various counts of obtaining money by false pretence contrary to section 313 of the Penal Code. He claimed that the money was received by a limited liability company of which he is one of the directors. He complains that the charges against him are wrongful and in contravention of the fundamental provisions of the constitution. He referred to section 72 (1) (e) and 82 (2) of the Constitution and requested for a constitutional court to determine his complaints.

The superior court dismissed that application and held that there was no breach of any of the constitutional provisions to enable the applicant to ask for or seek a stay of the proceedings in the Chief Magistrate's Court.

The applicant forwarded his notice of appeal while in Kamiti Prison where he was detained but the notice did not reach the court within the time prescribed by the rules. He filed his application under rule 4 of the rules for extension of time. The application was heard by a single judge (Shah JA) who in exercise of his discretion refused to grant the extension, hence this reference.

In his ruling, the single judge referred to a letter the applicant had written to the Chief Justice setting out

the issues for determination by a constitutional court. These are and we quote:-

- “1. The propriety or otherwise of the application and enforcement of section 84 (1) of the constitution with regard to violation of section 72 (1) (e) by the High Court or a constitutional court.
2. The propriety of whether or not the police power to arrest and charge a person for an alleged offence is a matter that can be questioned by a Court of law.
3. Whether or not a subscriber of a company can be criminally held responsible for the acts of such company.”

The applicant in support of his application referred to two conflicting decisions of this court, which are Munene v Republic (No 2) 1978 K.L.R. 105 and Anarta Karimi Njeru v Republic (No 2) (1979) K.L.R. 162. These two decisions are at present being considered in a partly heard appeal by a bench of five judges and until the decision is given nothing can be said about it. But whatever the outcome will be it is of no consequence to this reference. The single judge in refusing to grant the order requested for held that there is nothing unconstitutional about an accused person being arrested on a suspicion of having committed an offence as this is provided for by section 72 (1) (e) of the constitution to which the applicant referred. Equally, there is nothing unconstitutional about a subscriber of a company being charged with an offence allegedly committed by him when the subscriber is responsible for the management of the company. Any person so charged is at liberty to put forward his defences before the trial court.

The applicant has not shown to this court where the single judge went wrong when he refused the application for extension of time and confirmed the superior court’s refusal for a constitutional reference.

The Principal State Counsel strongly opposed the reference and further stated that the applicant had made two similar applications previously which were also rejected by the High Court.

Having heard the submissions made before us, we do not find any ground for reversing the ruling made by the single judge. The rejection was proper as the intended appeal would be futile. In the circumstances, we order this reference to be dismissed.

Dated and delivered at Nairobi this 23rd day of June, 1995

J.M. GACHUHI

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JUDGE OF APPEAL

R.S.C. OMOLO

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JUDGE OF APPEAL

A.A. LAKHA

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JUDGE OF APPEAL