



**Republic v Namuye & 4 others (Anti-Corruption Case 13 of 2016)
[2017] KEMC 122 (KLR) (Anti-Corruption and Economic Crimes) (13 June 2017) (Ruling)**

Republic v Catherine Akello Namuye & 4 others [2017] eKLR

Neutral citation: [2017] KEMC 122 (KLR)

**REPUBLIC OF KENYA
IN THE ANTI-CORRUPTION MAGISTRATE'S COURT
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION CASE 13 OF 2016**

LN MUGAMBI, CM

JUNE 13, 2017

BETWEEN

REPUBLIC PROSECUTOR

AND

CATHERINE AKELLO NAMUYE 1ST ACCUSED

BRUCE DOMINICK ODHIAMBO 2ND ACCUSED

MUKURIA NGAMAU 3RD ACCUSED

DOREEN W NG'ANG'A 4TH ACCUSED

QUORANDUM LIMITED 5TH ACCUSED

RULING

1. On 9.6.2017, the defence told this court for umpteenth time that Youth Enterprise Development Fund was yet to comply with the court order arising from the ruling of this court of 20.1.2017 which required it to supply all the relevant documents needed by the defence to prepare its defence against the charges facing the accused persons.
2. The defence contention has been that the Youth Enterprise Development Fund mode of supply has been at best piecemeal and unsatisfactory.
3. Mr. Munyua for the 1st accused admitted receiving further documents from Youth Enterprise Development Fund on 5.6.2017 but at the same time, a report was annexed by the Youth Enterprise Development Fund ICT officer Mr. Joseph Angaluki explaining why certain documents could not



- be supplied apparently because some ICT equipment from which the material could be retrieved had crushed.
4. Further to that there was also an affidavit of the Youth Enterprise Development Fund Chief Executive Officer detailing why some documents could not be supplied.
 5. As a result, Mr. Munyua contended that, their request was yet to be satisfied yet the remaining documents were most critical to the defence.
 6. His request was that the deponent of the affidavit ought to be put on the witness stand so that the truth about non-availability of the document can be tested.
 7. Mr. Amollo blamed the failure of this case to take off on what he described as machinations of the complainant to delay the supply of critical documents to the defence. He submitted that supply of those documents to the defence was neither a favour or privilege but a right guaranteed to the accused by *the Constitution* to secure a fair trial.
 8. He supported Mr. Munyua's position that in view of new developments, it was now imperative for the Chief Executive Officer of Youth Enterprise Development Fund to be cross-examined on the contents of the affidavit he had filed. He argued that the same should extend to the ICT Officer to ascertain the veracity of their allegation.
 9. Mr. Mogere supported the position taken by the colleagues on the defence side.
 10. Mr. Maramba for Youth Enterprise Development Fund submitted that contrary to the allegations made by the defence, Youth Enterprise Development Fund had supplied the defence with documents it required save for those that it could not trace and for which the Chief Executive Officer had sworn an affidavit explaining the reasons.
 11. He argued that Youth Enterprise Development Fund had done the best to comply with the court order in spite of the fact that requests by the defence were coming in piecemeal and sometimes late.
 12. Mr. Mutuku maintained the position that DPP had supplied all the documents that would be relied by the prosecution to prosecute this case.
 13. Mr. Maramba and Mr. Mutuku maintained that there was no point to cross-examine the Chief Executive Officer on the contents of his affidavit since no contradiction had been pointed out by the defence to warrant any clarification through cross-examination.
 14. I have examined the affidavit of Moriasi Arabu Josiah sworn on 6th June, 2017 and in the said affidavit, he has explained his inability to secure the remaining documents being demanded by the defence.
 15. He has in particular cited the fact that in November, 2016, the mail system crushed leading to lots of documents part of which being 1st accused that the defence is seeking.
 16. As a consequence, Youth Enterprise Development Fund is unable to find and serve those documents to the defence.
 17. That position is not rebutted by any evidence, that is indeed the position as stated is not correct.
 18. The court must therefore take information as the prima facie truth. This being so, it would therefore mean that Youth Enterprise Development Fund cannot supply any additional documents that it has not supplied so far. This is because a party can only be compelled to supply documents that are in its possession and custody and once it demonstrates to the satisfaction of the court that the required documents are not in its custody, then it has to be relieved that obligation.



19. The defence has not demonstrated that it has evidence to the contrary regarding existence of these documents to rebut the position brought forward by Youth Enterprise Development Fund.
20. As such, the case will proceed on the basis of documents supplied. If the defence is in a position to secure such documents through any other means, then it can do so but the matter of supply of documents through Youth Enterprise Development Fund is now closed.
21. Those are the orders of the court. The case will now be set down for hearing.

Ruling read in open court in the presence of Omollo holding brief for Mr. Munyua for 1st accused, Mr. Kuto for 3rd, 4th and 5th accused.

Mutellah holding brief for Miss Okoth and Mr. Mutuku for the state.

Maramba for Youth Enterprise Development Fund.

L.N. MUGAMBI [MR]

CHIEF MAGISTRATE

13.6.2017

