



**REPUBLIC OF KENYA**  
**IN THE PRINCIPAL MAGISTRATE'S COURT AT LAMU**  
**CRIMINAL CASE. NO. E096 OF 2025.**

**REPUBLIC.....**

**.....PROSECUTOR**

**-VERSUS-**

**MARIAM AHMED .....ACCUSED**  
**PERSON**

**JUDGMENT.**

**A. INTRODUCTION.**

- 1) By a charge sheet drafted on 21/05/2025 the accused is charged with the offence of wilfully obstructing a police officer contrary to section 103 (a) of the National Police Service Act,2011.
- 2) The particulars of the offence were that on 20/5/2025 at around 1630hours at Gadeni area in Lamu county the accused wilfully obstructed No. 232309 Cpl Patrick, No. 117779 PC Jacob and No. 119475 PC Iftin by trying to prevent them from escorting suspects namely Twahir Amar Mahmud and Amar Mahmud to Lamu Police station in due execution of their duties.
- 3) 3 witnesses were called by the state whereas the accused gave his sworn statement and called one other witness in his defence.

**The Prosecution's case.**

- 4) It is the prosecution's case through the evidence of Pw 1, 2 and 3 that on the material day and time they set out on an assignment to arrest the accused's sons who had been suspected to have been involved in a theft case that was under active investigations and were to arrest the sons for questioning.
- 5) That they left the station in the company on the complainant in the theft case and who showed them the accused's house and they went to the said house and upon arrival they found the accused sitting by the door and they introduced themselves as police officers and were there to arrest her sons for interrogations over an ongoing investigations and upon hearing this the accused stood up, got into the house and locked them outside stating that they will not arrest her sons.
- 6) The officers then surrounded the house and Pw PC Iftin Abdile accessed the door through the back door and when the husband of the accused and the sons saw him inside, they went upstairs and escaped through some opening.
- 7) PC Iftin Abdile then opened the front door for the officers and who entered and went to the boys room and conducted a search wherein they recovered 5 sachets of bhang and a toy pistol that were under a mattress among other exhibits which are now exhibits in another matter not before this court.

### **Defence hearing.**

- 8) The accused in her sworn defence stated that on the material date and time she was not at home as she had gone to pick her children from school and came back at 1800hours only to find one of her children he had left home crying and the door to their house broken. The child then informed her that it's the police the officers who had broken and among those he could recognize was one by the name Abdi.
- 9) She then sought assistance from MUHURI a local CBO who advised her to go and report and upon arriving at the police station the OCS saw her and ordered that she placed in custody. It was her testimony that her statement was never taken.

- 10) Dw 2 her daughter in her sworn statement stated that on the material date she was picked by her mother the accused as it tradition at 1700hours and confirmed that upon reaching home they found their door broken. She was not cross examined.
- 11) Dw 3 a son to the accused who was left behind when the accused went to pick Dw 2 from school stated that he heard some commotion in their house and when he went to find out, he found 4 police officers one of whom was known to him as Abdi and with a lady who was wearing a ninja and upon asking what they were doing in their house, he was ejected out of the house by Abdi and later he saw him leave with 4 phones and his brother's ID card. Similarly, he was not cross examined.

### **Submissions**

- 12) At the close of the case, the accused through his counsel sought to file submissions. The said submissions dated 7/10/2025 have been read and considered.

### **B. ISSUE FOR DETERMINATION.**

- a) Whether the charge of willyfully obstructing a police officer contrary to section 103(a) of the National Police Service Act has been proved.**

### **C. ANALYSIS AND DETERMINATION.**

- 13) **section 103(a) of the National Police Service Act provides as follows:-**

#### **103. Assault in execution of duty**

Any person who—

- a) assaults, resists or willfully obstructs a police officer in the due execution of the police officer's duties;
- b) assaults, resists or willfully obstructs any person acting in aid of the police officer;
- c) attacks an animal belonging to the Service; or
- d) intentionally or recklessly, destroys police property,

commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding ten years, or to both.

- 14) The elements that are to be proved in order to prove the charge against the accused are 2. That there was obstruction and that the person who is alleged to have been obstructed was a police officer.
- 15) It is not in doubt that the persons listed in the particulars are police officers and the only thing left for determination is whether the accused willyfully obstructed the said officers in due execution of their duties.
- 16) In order to make this finding, there is need to look at the particulars in support of the charge vis a vis the evidence tendered by the prosecution.
- 17) The particulars read as follows;
- MARIAM AHMED : On the 20<sup>th</sup> day of May 2025 at around 1630hours at Gadeni area of Langoni location within Lamu central sub county in Lamu county, willyfully obstructed No. 232309 Cpl Patrick, No. 117779 Pc Jacob and No. 119475 Pc Iftin, police officers by trying to prevent them from escorting suspects namely Twahir Amar Mahmud and Amar Mahmud to Lamu police station in due execution of their duties.**
- 18) All the prosecution witnesses were clear that when they got to the house to effect arrest the accused allegedly locked them out but they managed to gain access to the house through the back door but sadly they were not able to arrest their intended suspects as they managed to escape.
- 19) The question that begs an answer does this piece of evidence that was perfectly corroborated by all witnesses support the particulars of the charge? The particulars speak to prevention of the officers to escort the suspects to police station whereas the evidence speaks to the fact that she prevented them from being arrested and aided their escape.
- 20) To my mind the act of escorting in the circumstances used could only mean that the suspects had been arrested and the accused did something that made it impossible for the police officers to take the suspects from their home after being arrested to the police station. The word escorting simply means to accompany another for either protection or as a mark of rank. This is not the case obtaining herein as the intended suspects managed to escape their dragnet.
- 21) Given the set of circumstances and as borne out from the evidence it cannot be said that the accused prevented the police from

escorting the suspects when the police had not arrested them. The police had no one to escort as they were in the company of themselves and returned to the station as they came. The accused did not therefore prevent them as indicated in particulars.

- 22) In her defence she stated that she was not at the scene as alleged as she had gone to pick her children from school and came back only to find her door to the house broken and one of her children crying and who was able to inform her what transpired and he could recognize some of the officers who had done so. The said officer bears resemblance as Pw 3 going by his name but I cannot conclusively say it was Pw 3.
- 23) She further called to her defence 2 of her children who gave sworn evidence and just like the accused they were not cross examined. They were all clear that the alleged time it is said she prevented the officers from executing their duties she was actually picking them from school. This defence remains unshaken and I am inclined to agree with it wholly as it was corroborated with no reasons to doubt and maybe that is why none of them was cross examined in a bid to poke holes.
- 24) I do therefore find that the defence effectively rebutted the case by the prosecution by proving that indeed the accused was not at the scene of the incident at the material time and as such it cannot be that she prevented the police from doing any of their duties as alleged.
- 25) As I depart allow me to point out an issue that was raised during the pendency of this matter. The accused decried of being harassed by police and from the evidence and the contradictions in the particulars and the testimonies, I am tempted to believe that the accused could be genuine in her complaints. As we speak herself and the 2 sons are in court facing various charges.
- 26) Whereas it is not mandatory to record her statement over the events of what transpired, it is good practice as I have seen in other matters apart from instances the suspect refused to record statements, accused's statements have always been recorded which is not the case herein. The accused was clear that her statement and that of her witness who witnessed the incident did not have their statements recorded. This in my view speaks to the harassment the accused is speaking about. There was no explanation why her statement and that of her witnesses were not taken and considered in investigations.

- 27) Furthermore, it is on record that when she went to report the damages done on her door by the police again, she was placed in custody and no OB was issued to her and it was not issued until the ODPP intervened and the same was issued.
- 28) All these in my view speak to the harassment the accused is speaking off and which I must say is unfortunate in this day and age. The relationship between the police and the citizens should in ordinary circumstances be a partnership built on trust and cooperation all of which are essential for maintaining public safety and having an effective justice system.
- 29) I have noted that in Lamu county the relationship between the police and the public is swiftly dwindling to levels not seen before and that is why every more often than note at plea stages suspects/accused persons always claim to have been beaten by police in some instances, their monies taken away during arrest/searches and that they plant narcotics specifically 2 sachets on them if they do not comply with their "demands". I appreciate these are their words against police officers. They may be true or false but we need to ponder and ask why would they say such words? As Swaleh Mdoe would say in his now famous tafakari ya Babu, ata wewe yatafakari hayo.

#### **D. CONCLUSION AND DISPOSITION.**

- 30) The upshot of the foregoing is that the prosecution failed to prove the charge of wilfully obstructing a police officer contrary to section 103(a) of the National Police Service Act and this court hereby acquits the accused person under section 215 of the Criminal Procedure Code.
- 31) Orders accordingly.

**DATED, SIGNED AND DELIVERED AT LAMU LAW COURTS THIS..6<sup>th</sup> ... DAY OF ...November...2025.**

**F.M. MULAMA  
RESIDENT MAGISTRATE**

**In the presence of:**

Peter Birir for DPP.

Mariam Ahmed.

Aboubakar advocate for accused

Court Assistant:- Fathiya Loo.