



Karshi & 3 others v Inspector General of Police & another (Miscellaneous Criminal Application E328 of 2024) [2025] KEHC 1300 (KLR) (Crim) (27 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1300 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E328 OF 2024
AM MUTETI, J
FEBRUARY 27, 2025**

BETWEEN

**AHMED MOHAMED KARSHI 1ST APPLICANT
ALI SHEIKH HASSAN 2ND APPLICANT
ABULLAHI SALAT HUSSEIN 3RD APPLICANT
ABDULAZIZ MOHAMMED KARSHE 4TH APPLICANT**

AND

**THE INSPECTOR GENERAL OF POLICE 1ST RESPONDENT
DIRECTOR OF PUBLIC PROSECUTIONS 2ND RESPONDENT**

RULING

1. The applicant by way of an application dated 10th September 2024 sought the following orders :-
 - i. This be certified urgent and service be dispensed with and it be heard ex-parte in the 1st instance due to its urgency.
 - ii. This Honourable Court be pleased to grant the applicant anticipatory bail pending arrest or charge on such terms the court may deem fit to impose.
 - iii. Pending the Hearing and determination of this application, the Honourable Court be pleased to issue a conservatory order restraining the 1st respondents, their servants juniors, officers and/or anybody whosoever acting under their directions interfering with the applicant herein,
 - iv. Any further or other orders or directions which the Honourable Court considers appropriate in the circumstances.



2. The Learned Hon Lady Justice E. Maina considered the application and granted the following orders:-
 - I. That, the Notice of Motion is certified as Urgent.
 - II. That, the Application to be served for Hearing Inter Partes
 - III. That, an Interim order to issue in terms of Prayer 3 of the Notice of Motion until 17th September 2024 when the application will be heard before the Presiding Judge of the Criminal Division.
3. On 16th January 2025 when the matter came up for mention before this court Ms. Ogega counsel for the prosecution informed the court that the Director of Public Prosecutions had made the decision to charge and a charge sheet was registered charging the 1st, 2nd and 4th applicants.
4. Counsel further informed the court that no charges had been preferred applicant. However, Mr. Kanyoko appearing for the applicants indicated to the court that the Director of Public Prosecution's directions amounted to disobedience of the orders issued by Lady Justice E. Maina and this court consequently directed Ms. Ogega to return to this court on 23rd January 2025 to explain whether or not the orders of Lady Justice had been disobeyed.
5. The matter came up on the 23rd January 2025 when Ms. Ogega indicated that the investigating officer Sergeant Andrew Masinde had sworn an affidavit in which he deposed that a complaint was made to the police and following investigations the applicants were summoned on 10th September 2024 to record statements which they did and were released on a cash bail of Kshs. 100,000 which the fact according to Ms. Ogega was not disclosed to the court before the order dated 10th September was granted.
6. According to Ms. Ogega the applicants approached this court without course for they were already enjoying a cash bail which the police had granted. In Ms. Ogega's view the applicants did not come to court with clean hands for they concealed that fact. Ms. Ogega went further to submit that the applicants were never arrested but were only informed to attend court on the 26th September 2024 and that is when the prosecution got to know of the High Court order which had not been served on them hither to the appearance on that date.
7. The prosecution maintained that the order issued by the court was not violated thus the protestation that the applicants were unfounded and calculated to drag the matter with the sole intention of ensuring that the applicants do not submit themselves to the jurisdiction of the trial court for purposes of the intended prosecution.
8. Counsel for the prosecution pleaded with the court to direct the applicants to submit themselves to the criminal justice system since the decision had already been made charged. In Ms. Ogega's view the prosecution should be allowed to exercise its prosecutorial function without unnecessary fetter by this court.
9. Mr. Kanyoko advocate for the applicants urged this court to find that the prosecution, by deciding, to charge the applicants while this matter was still pending acted in violation of the order thus their contact amounted to contempt of court for which the respondents ought to be punished.
10. This court has considered the submissions made by both counsel. It is clear from the affidavit of the investigating officer that a complaint was properly filed with the police and the investigations were conducted culminating in the Director of Public Prosecution decision charged.
11. The applicant has not presented any evidence to show that they were arrested contrary to the court order and it is apparent that they have not come to court with clean hands.



12. The court in granting Order No.3 simply restrained the respondents from arresting, harassing or otherwise howsoever interfering with the applicants. A plain reading of the order leaves no doubt that there was no bar to charge the applicants thus upon conclusion of the investigations the matter would be entirely left to the discretion of the DPP who under Article 157 (10) of the Constitution would be at liberty to decide whether or not to charge the applicants.
13. The failure by the applicants to disclose to the court that the police had granted them a cash bail amounted to concealing a material fact which could have otherwise persuaded the court to reach a different finding.
14. Under Section 123 of the Criminal Procedure Code the police are empowered to admit a person suspected of crime to bail pending the conclusion of the investigations and by doing so, the police cannot be said to be engaged in an act of harassment or interference with a suspect.
15. It follows therefore that the application before this court is spend since investigations have been concluded and a decision to charge has been made. There is nothing left for this court to determine given that there is no evidence of harassment or arrest of the applicants.
16. Accordingly, this court finds that there is no reason to punish the respondents for they have not committed an act of contend to justify invoking powers vested in the court under Section 5 of the Judicature Act Cap 8 of the Laws of Kenya.
17. The invitation to punish the respondents is hereby rejected.
18. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF FEBRUARY, 2025.

A. M. MUTETI

JUDGE

In the presence of:

Court Assistant: Kiptoo

Kanyoko for the applicant

Ms Ogega for the Respondent

