



Lococo & 2 others v Director of Public Prosecutions & 10 others; Rafiki Resort Management Limited & another (Interested Parties) (Petition E006 of 2024) [2025] KEHC 5048 (KLR) (25 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5048 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
PETITION E006 OF 2024
M THANDE, J
APRIL 25, 2025**

BETWEEN

**DANIELE LOCOCO 1ST PETITIONER
MASSIMO NATIVI 2ND PETITIONER
RAFIKI LIMITED 3RD PETITIONER**

AND

**THE DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT
INSPECTOR GENERAL OF POLICE 2ND RESPONDENT
DIRECTOR OF CRIMINAL INVESTIGATIONS 3RD RESPONDENT
DAVID K. SIELE 4TH RESPONDENT
COSIMO ARMENO MODUGNO 5TH RESPONDENT
MARIA GRAZIA MOSCONE 6TH RESPONDENT
FIORENZO GIROLA 7TH RESPONDENT
ROSY TETTAMANTI 8TH RESPONDENT
RITA NAPPO 9TH RESPONDENT
SENIOR RESIDENT MAGISTRATE, KILIFI 10TH RESPONDENT
THE ATTORNEY GENERAL 11TH RESPONDENT**

AND

**RAFIKI RESORT MANAGEMENT LIMITED INTERESTED PARTY
THE LAW SOCIETY OF KENYA INTERESTED PARTY**



RULING

1. The Petitioner filed a Petition dated 31.5.24 against the Respondents, seeking a raft of reliefs in respect of criminal charges against the 1st and 2nd Petitioners relating to sale of villas in Rafiki Village on Plot No. Kilifi/Jimba/1544.
2. Before this Court for determination is an Application dated 20.11.24 seeking:
 - a. Spent.
 - b. Pending the hearing and determination of this application the orders made by the 10th respondent today, 20th November 2024 be stayed.
 - c. Pending the hearing and determination of this application, all further proceeding in Kilifi Chief Magistrate criminal case no. E0328 of 2024 (Republic VS. Daniele Lo Coco and Massimo Nativi) be stayed.
 - d. Pending the hearing and determination of this petition, all further proceeding in Kilifi Chief Magistrate criminal case no. E0328 of 2024 (Republic VS. Daniele Lo Coco and Massimo Nativi) be stayed.
 - e. Pending the hearing and determination of this petition the orders made by the 10th Respondent today, 20th November 2024 be stayed.
 - f. Spent.
 - g. The court be pleased to order that the Director-General, Directorate of Immigration services should not comply with the orders given by Hon. James N. Mwaniki, C M in Kilifi Chief Magistrate criminal case no E328 of 2024 (Republic VS. Daniele Lo Coco and Massimo Nativi) on 6th September 2024 and 20th November 2024.
 - h. The costs of this application be provided for.
3. The grounds of the Application are that evidence has emerged that the 10th Respondent is colluding with or taking directions from the 7th and 9th Respondents and that he is not acting independently. Further that the 10th Respondent has maliciously and without any justification seized the 1st and 2nd Petitioners' passports, despite his written assurances that he will be faithful to his oath of office. It was further stated that the 1st Petitioner has deeply personal reason to travel to Italy and that requiring her to share the reason with the complainants in the criminal case is needless intrusion into privacy rights.
4. The Petitioners added that although Hon. Mwaniki, the trial magistrate ordered that the criminal case be heard on priority basis, he has not given any hearing dates. Their view is that the intention is to hold the 1st and 2nd Petitioners in Kenya with the actual knowledge that they have not violated their bail terms. Further, that the 10th Respondent apologized in writing for the unlawful orders he gave on 6.9.24 in the absence of the Petitioners that led to their imprisonment. He however cancelled their travel plans and seized their passports, thereby occasioning them losses in excess of Kshs. 1million by way of air tickets. Their view is that unless the proceedings before the magistrate are stayed pending the determination of this Petition, he will continue to cause the Petitioners more losses. Further that the 10th Respondent acting or taking orders from the 7th and 9th Respondents will continue violating the Petitioners' rights and abusing his judicial authority.



5. The 1st Respondent opposed the Application vide a replying affidavit sworn on 26.11.24 by Joseph Mwangi, prosecution counsel. He averred that by their Application, the Petitioners are challenging the decision of the Chief Magistrate in Kilifi declining to recuse himself from the handling the lower court matter and further the orders of the lower court issued on 20.11.24 ordering the Petitioners to deposit their passports. He further stated that the Application is misconceived and an abuse of the court process as it is at variance with the main Petition. Whilst the Petition is challenging the 1st and 2nd Respondents' powers to institute criminal proceedings and conduct investigations respectively, the application herein is challenging the orders of the trial court that ordered the Petitioners to deposit their passports in court. Further that it would be wrong to allow the Petition to be amended so as to accommodate the prayers sought in the application and the averments made in support, which should be challenged through an appeal and not through this Petition. This would amount to a misjoinder of issues as has been demonstrated herein above.
6. The 1st Respondent further urged that the further affidavit sworn on 24.9.24 by the Petitioners' counsel be expunged from the record, having been filed without leave of the Court.
7. Counsel further stated that it is false and misleading to claim that there has been collusion between the 1st, 7th and 9th Respondents, which claim is made without any evidence whatsoever.
8. Further, that the criminal case is part heard, the prosecution having already called two witnesses. Additionally, that the Petitioners are guilty of approaching 2 different courts over the same issue having equally filed an application before the trial court for review of the orders issued against them to deposit their passports in court. Further that it cannot be understood why the Petitioners want to travel outside the country in the middle of a criminal trial, knowing all too well that the prosecution intends to call other witnesses and has not closed its case.
9. The 1st Respondent added that this Court has previously been invited twice to issue orders staying the proceedings in the lower court and the same has been declined. Doing so at this juncture would be a travesty of justice. It urged that the matter be allowed to proceed to its logical conclusion.
10. On their part, the 10th and 11th Respondents filed grounds of opposition dated 25.11.24. the grounds are reproduced below:
 1. That the omnibus application is bad in law, misconceived, mischievous and an abuse of the court process.
 2. That the application is misplaced as it has been filed in the wrong forum as it ought to be filed in an appeal file and not this Petition.
 3. That the application is against the spirit of expeditious disposal of suits particularly petitions which practice dictates that they should be heard within a year's time.
 4. That the application is in itself illegal for seeking illegal orders seeking to promote non-compliance of genuine court orders.
 5. That this application is at all costs unnecessary and it only seek to confuse the court and the parties herein on the prosecution of the issues at hand by adding more issues to this already convoluted petition.
 6. That the applicants are pursuing several orders in a single application which is bad in law as the same ought to have been heard separately thus the same is unfair to the Respondents and the court.



7. That the applicants are seeking orders of stay on a non-existent file before the magistrate's court in Kilifi as file Number Kilifi Chief Magistrate Criminal Case Number E0328 of 2024 is unregistered hence does not exist.
8. That the grounds of the application are sub judice the application for recusal heard before the trial court and the same should be struck out and leave the orders sought as hopeless and without any basis.
9. That the application is unconstitutional in so far as the same is against the contents of Article 160(5) of *the Constitution* of Kenya, 2010 which states as follow; A member of the Judiciary is not liable in an action or suit in respect of anything done or omitted to be done in good faith in the lawful performance of a judicial function.
10. That the application has been filed in bad faith and aimed at stalling the gains made by the judiciary in the use of technology to efficiently dispense justice
11. There is also on record grounds of opposition dated 25.11.24 filed by the firm of Ndegwa & Ndegwa Advocates. The gist of the opposition is that if the Petitioners were aggrieved by the ruling of 20.11.24 that reviewed their bond terms, they ought to have lodged an appeal in the High Court. They argued that this Court has no jurisdiction to hear and determine an appeal disguised as a constitutional petition. Further that the probative value of all the evidence adduced before the court is yet to be evaluated by the trial court.
12. Although directions were given for filing of submissions, only the Petitioner filed submissions.
13. After allowing the Application dated 31.5.24 staying the prosecution of the Petitioners Kilifi Chief Magistrate Criminal Case No. E0328 of 2024 (Republic VS. Daniele Lo Coco and Massimo Nativi) pending the hearing and determination of the Petition, it follows that the orders sought herein are also allowed.

DATED SIGNED AND DELIVERED IN MALINDI THIS 25TH DAY OF APRIL 2025

M. THANDE

JUDGE

