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27/5

**KENYA POLICE
CHARGE SHEET**

CR.NO: 461/276/2015

DATE TO COURT: 27th May, 2015

COURT FILE NO: AIC 3/15

O.B. NO.59/ 24/5/2015

Christian Names in full or Name	Surname or Father's Name	Identity Certificate No.	Sex	Nationality or tribe	Apparent Age	ADDRESS (include district and Location where Applicable 119-MERU)
1). CLEOPHAS	NAIBEI	10961394	MALE	KENYAN	45 YEARS	

CHARGE COUNT ONE	CORRUPTLY SOLICITING FOR A BENEFIT CONTRARY TO SECTION 39 (3) (a) AS READ WITH SECTION 48 (1) OF THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT NO. 3 OF 2003
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PARTICULARS OF OFFENCE (See Second Schedule)
CLEOPHAS NAIBEI: On diverse dates between 22nd May 2015 and 23rd May 2015 at Meru police station in Imenti North Sub County within Meru County, being a person employed by a public body to wit, National Police Service in the Ministry of Interior and Coordination of National Government, as a police Corporal, corruptly solicited for a benefit of Kshs. 30,000/= from **Thomas Mwasya Sanga** as an inducement so as to release his motor vehicle registration number KBB 694 F of make Subaru that was held at the said police station.

RECEIVED
 THE DIRECTOR OF PUBLIC PROSECUTION
 MERU LAW COURTS
 27/5/2015
 Box 2377 Meru

(OTHER COUNTS SEE OVERLEAF)

Accused	Date of Arrest	Without or with warrant	Date Apprehension Report to Court	Bond or Bail and Amount	Is Application made for Summons to Issue
YES	24/5/2015	W/O	////////////////////	ON CASH 30,000/= BOND	////////////////////

Remanded or Adjourned to

Complainant and Address
 REPUBLIC OF KENYA THROUGH ETHICS AND ANTI-CORRUPTION COMMISSION

Witnesses
 1. Thomas Mwasya
 2. Others to be stated
 3.
 4.

Sentence Court and Date
 ANTI-CORRUPTION COURT AT MERU LAW COURTS.....If fine paid.....

[Signature]
 Officer in Charge Meru Police Station
 Date:

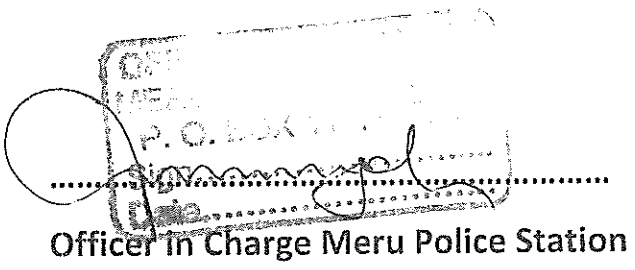
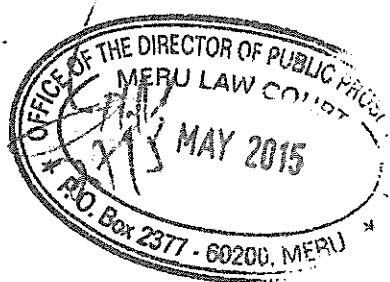
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2/1/15

COUNT II

CORRUPTLY RECEIVING A BENEFIT CONTRARY TO SECTION 39 (3) (a) AS READ WITH SECTION 48 (1) OF THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT NO. 3 OF 2003.

PARTICULARS OF THE OFFENCE.

CLEOPHAS NAIBEI: On 24th day of May 2015, at Meru police station in Imenti North Sub County within Meru County, being a person employed by a public body to wit, National Police Service in the Ministry of Interior and Coordination of National Government, as a police corporal, corruptly received a benefit of Kshs. 25,000/= from **Thomas Mwasya Sanga** as an inducement so as to release his motor vehicle registration number KBB 694 F of make Subaru that was held at the said police station.



REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S COURT AT MERU
A/C NO. 3 OF 2015

REPUBLIC.....VERSUS
CLEOPHAS NAIBEI
BENSON SINDANI..... ACCUSED

27/5/2015

Magistrate – E.K. Makori – Chief Magistrate

Prosecutor – Chief Inspector Thuku

Court Clerk: Arimi

Interpretation – English

Accused – Ndubi for accused

The substance of the charge and every element thereof has been stated by the court to the accused persons in the language that they understands, who being asked whether they admit or denies the truth of the charges replies:-

Count 1 -

Accused – Its false.

Count II -

Accused – Its false.

E. MAKORI

C.M.

Court – Plea of not guilty entered.

E. MAKORI

C.M.

Ndubi – That I will seek that the accused be admitted to bail pending trial with alternative cash bail. The accused person has been but on police bail of Kshs. 30,000/= he has availed himself. If granted bail he will attend court. We will need to be supplied with the police evidence they wished to rely o.

E. MAKORI

C.M.

Court Prosecutor -

That we will not oppose the accused being released on bail terms. The defence to await 2 weeks to get transcripts it will take two weeks time. Hearing will be processed.

E. MAKORI

C.M.

Ndubi – The accused be tried speedily, the accused is a civil servant.

E. MAKORI

C.M.

RULING

Bond is not opposed by the prosecution in this matter. Accused released on cash bail of Kshs. 50,000/= or 100,000/= with surety.

The offence be supplied with the charge sheet and evidentially statements/and or what the police will intend to rely on. The transcripts be supplied immediately the same is processed to the defence.

E. MAKORI

C.M.

Court Order – Hearing on 2/9/2015.

Further mention on 11/6/2015.

E. MAKORI

C.M.

26/5/2015

27/5/2015 – 12.30 p.m.

Before: E. Makori – Chief Magistrate

Chief Inspector Thuku

Court Clerk: Arimi

Proposed surety for accused worn in swahili states:

I am called GRACE CHEBET CHEMANGARE ID Nos 9762441 Mobile Nos 0726343581. I do stay at Kinoru. That I work at Central Bank – Meru. I have come to stand surety for the accused who is my cousin. That the terms are Kshs. 100,000/= . I have two pay slips one for the police service and also the other for Central Bank which I have attached. I will be ready to forfeit

Kshs. 100,000/= if he absconds. I will ensure that he attends court.

E. MAKORI

C.M.

Court Prosecutor – We will not object.

E. MAKORI

C.M.

RULING

I have realized the surety is a police officer seconded to the Central Bank of Kenya. The employers have attached the relevant documents to introduce the surety.

The surety understands the role of surety and the court has also asked her about the issue of conflict as a police officer in standing surety for another in case the accused absconds. The surety understands the consequences.

The prosecution too does not object to her standing surety for the accused.

The court allows the present surety on the subject of the documents

produced.

E. MAKORI

C.M.

27/5/2015

11/6/2015

Before: E. Makori – Chief Magistrate

Emily/Thuku for state

Court Clerk: Arimi

Accused – present

Court – Hearing on 2/9/2015

E. MAKORI

C.M.

Mr. Mutegi – I will seek that we be served with all witness statements
accused wishes to rely on.

E. MAKORI

C.M.

Court Order – The prosecution be supplied with documents the prosecution wishes to rely on in evidence.

E. MAKORI

C.M.

11/6/2015

2/9/2015

Before: E. Makori – Chief Magistrate

Chief Inspector – Thuku

Court Clerk: Arimi

Accused – present

Mr. Mungai for the state

Mr. Kiogora for the accused.

E. MAKORI

C.M.

Mr. Mungai – This was slated for hearing on our part we will not proceed –

reasons are that the formal consent to prosecute the matter to proceed in this particular matter. We did forward the file to D.P.P. Nairobi. Its the time. The matter is for hearing. I will request for adjournment. We will follow the issue.

E. MAKORI

C.M.

Mr. Kiogora – I will oppose the application. The accused was charged on 27/5/2015. The accused has a right to speed trial. He is under interdiction. Its a ... why the accused was charged without consent. Its not said when the consent will be given. My client should not be punished for D.P.P.s bureaucracy. If there was a consent the date should be coming. There was a consent attached which is an email between the EACC and the police. The D.P.P. not ready to proceed with the matter. We don't have statements and transcription. Not provided we will oppose the application.

If adjournment is granted we will seek a nearer date.

Accused is on half salary.

E. MAKORI

C.M.

Mr. Mungai – Its the mention on the issue of consent. The file is forwarded to D.P.P headquarters, we don't have the authority to charge. I have talked t the investigating officer, the consent should be somewhere in November which is a month away. The communication which is referred to is partial. Statements were supplied.

E. MAKORI

C.M.

RULING

1. That adjournment is allowed.
2. That the authorities that there are including **Nicholas Kangangi case** is such that there should never be prosecution in EACC matter completely until the DPP gives consent – This is a issue now which needs to be addressed in the constitutional court.
3. DPP given up to November to produce the said consent failure the matter should automatically be withdrawn.

E. MAKORI

C.M.

Court Order – Hearing on 17/11/2015.

E. MAKORI

C.M.

17/11/2015

Before: E. Makori – Chief Magistrate

Emily/Thuku for state

Court clerk - Arimi

Accused – present – Gitonga holding brief for Kiogora.

E. MAKORI

C.M.

Later

17/11/2015

Before: E. Makori – Chief Magistrate

Mungai for state

Court Clerk: Arimi

Accused – present – Mungai for the state

Mr. Mungai – The matter was for hearing today. We have not got consent to proceed in this matter from the Headquarters. They are still perusing the file. Its because of the work that there is all the files in this country are taken there then they ae making our work difficult. I will then seek for adjournment in another matter. We have got consent. That the consent should be soon.

E. MAKORI

C.M.

Mr. Kiogora – I was ready to proceed. I am opposed to the application. When the accused was charged it was said there was consent. I did ask that why was he ever charged minus the consent. Its now three months since then. The D.P.P. cannot be said to be burdened. There are matters we are actually seeing on T.V where consents are given upfront. We do support the adjournment.

E. MAKORI

C.M.

Court Order – Ruling at 2 p.m.

RULING

1. This matter was due for hearing today. The prosecution as sought for adjournment on grounds that the ODPP has not given consent for the matter to be sustained in court.

2. The application for adjournment is opposed on grounds that the accused was charged way back on 27/5/2015 with a partial consent that when the matter came up on 2/9/2015 it could not proceed on grounds that there was no formal consent to have the matter in court. The court recorded a ruling which is on record to this effect:-

That from the available authorities there ought not to be a prosecution matters before consent is issued by the ODPP.

The DPP was given to today 17/11/2015 ample time to procure the consent. Today there is similar story that no consent has been procured hence the matter ought to be adjourned.

AND AG CIVIL APPEAL NO. 331/2010 H.C JR MISC APPL. NO.

642/2008 the court of appeal held this way on issues of consent:-

That minus consent no mater should be placed before a court of law. See the *Kangangi case as reported in [2011] eKLR.*

3. At this point I reckon then that I had orde4ed prosecution to withdraw their matter if no consent is procured by today Under Section 87 (a) CPC. This will .. even if they withdraw – it will be a discharge and accused can be arrested even tomorrow if the consent is obtained. I also reckoned that I can reject the present complain under section 8 a (5) and discharge the accused since the consent charges are not supported by a requirement of the law. This too I a discharge and accused can still be arrested if time consent is found.

At this point too plea having been taken in may, 2015 I cannot order the prosecution to close its case – they will array bias on my part.

That being the scenario – the prosecution is granted one more chance but that

the sentiments of the accused are recorded appropriately.

E. MAKORI

C.M.

17/11/2015

Court – Ruling in open court by me E.K. Makori – Chief Magistrate

E. MAKORI

C.M.

Court Order – Hearing on 25/2/2016.

E. MAKORI

C.M.

Ochieng – B.O. Principal Magistrate

Prosecutor – Clara

Court Clerk; Caren

Accused – present

Mr. Kiogora present for accused

Mr. Kiogora – The original file is before Justice Wendo. We had filed a

petition No. 17/2015.

The Judge took proceedings of the current file. She delivered a ruling staying the ... file. I seek courts directions.

Prosecutor – I am aware of that.

Court – Mention on 10/3/2016 for directions in court No. 1.

B.O. OCHIENG

P.M.

25/2/2016

10/3/2016

Before: Hon. E. Makori – Chief Magistrate

Prosecutor – Maroko

Court Clerk: Maina

Accused – present Kiogora present as there was an application before the High Court. There is a ruling. It has stayed the matter.

E. MAKORI

C.M.

Court Order – This is hereby stayed pending the determination of petition No. 17 of 2015 before the Superior Court.

E. MAKORI

C.M.

27/3/2017

Before: Hon. Mrs L. Ambasi – Chief Magistrate

Kinyua for state

Court Clerk: Faith

Accused (OB) absent. Kiogora

.....

Kiogora – Judgment by J. Wendoh referring this matter and 1100/16. I forgot to inform the clients of the dates as I have not been feeling well.

Kinyua – No objection.

Court – Mention 10/4/2017.

L. AMBASI

C.M.

27/4/2017

10/4/2017

Before: Hon. Mrs L. Ambasi – Chief Magistrate

Kinyua for state

Court Clerk: Faith

Accused O/B – present Kiogora

Language – English

Kiogora – Pray for another date as matter as there is a direction from HCC to come up with fresh.

Kinyua – I don't have clean instructions on this matter nor do I have the EACC file.

Court – By consent Mention on 10/5/2017.

L. AMBASI

C.M.

10/4/2017

10/5/2017

Before: Hon. Mrs Ambasi – Chief Magistrate

Prosecutor – Kinyua

Court Clerk: Ribba

Accused (OB) present – Kiogora

Language

Kiogora -

On 10/4/2017 DPP had not complied and we did two letters to the ODPP requesting for a proper charge sheet and directions. We also spoke to ODPPP. Pray for one month.

Prosecutor – We have a new charge sheet the issue of the previous does not

come in. In any case its the prosecution case it -

Kiogora – We are not ready to take plea s those are the same charge sheets and not amended.

Court – By consent plea taking before the plea taking court on 29/5/2017.

L. AMBASI

C.M.

10/5/2017

29/5/2017

Before: Hon.H. Ndungu (Miss) – Chief Magistrate

Musyoka for state

Court Clerk: Faith

Accused - .OB

Prosecutor – It is for plea taking. The matter had proceeded to the High Court and the court directed it come for plea taking. As it proceeds for plea taking we are to consolidate it with another.

We have a new charge sheet.

H. NDUNGU

C.M.

29/5/2017

M/S Muua holding brief for Kiogora for the accused persons. He is indisposed and unable to attend court and address the court on the issue of consolidation. He seeks another date.

H. NDUNGU

C.M

Prosecutor – No objection.

H. NDUNGU

C.M.

Order – Mention for plea taking and consolidation 30/5/2017.

H. NDUNGU

C.M.

29/5/2017

30/5/2017

Before: Hon. H.N. Ndungu – Chief Magistrate

Prosecutor – Musyoka

Court Clerk: Maina

Accused – present

Kiogora Mugambi for both accused – It is for plea taking.

I seek supply of new charge sheet.

H. NDUNGU

C.M.

Kiogora -

I have been supplied with new charge sheet. I have a P.O. The charges that have been sought are in clear disregard by the procedure laid under the Ethics and Anti-corruption. This Act section 35. There is a letter dated 29th March, 2016 from the DPP. It is addressed to CEO of Ethics and Anti-corruption Commission. In the letter DPP gave a consent that Cleophas be charged with two limbs of corruptly receiving a benefit and a 2nd similar charge. In the

same letter the DPP recommended that Benson Sidani be charged with malicious damage to property and a fourth charge of threatening an Ethics and Anti-corruption officer. The charges before court have added a new charge of conspiracy and removed the charge of receiving. We have not been served with letter from DPP. That offends section 35. Both accused are charged with counts 1 and 2 which offends section of the EAC Act. We pray the said charge be struck out. It is an abuse of the court process.

H. NDUNGU

C.M.

Prosecutor – There is no charge sheet before court. What is submitted is pure speculation of what could be before the court. Charges have not been read. The 1st accused person took plea way back in 2015 and for today we are before court to consolidate and file a new charge sheet to the 2nd accused person which has not been done. I pray that the court do allow the CCC to take plea after which the court .. may consolidate the validity of the charge before court. Further on permission of Section 35 of the EAC Act the Section gives a lengthy procedure of how Anti-corruption matters should be prosecuted. Nothing in particular has been pointed out on how the section has

been .. and in essence of a clear point of law the court is left to speculate on what indeed is irregular in that section. Finally counsel submits on letter dated 29/3/2016 from office of DPP. That letter is not produced to the court and the court is left to speculate on the contents on and whether indeed there is such a letter. I urge the court to allow us to proceed with plea taking for the accused persons after which counsel can make his application.

H. NDUNGU

C.M.

Kiogora – I have the letter. I urge the court to give us a ruling on the P.O.

H. NDUNGU

C.M.

Order – Ruling on 5/6/2017.

H. NDUNGU

C.M.

30/5/2017

RULING

When this matter came up for consolidation and plea taking on 30/5/2017 Mr.

Kiogora Mugambi for the 2 accused persons Cleophas Naibei and Benson Sindani, objected to the plea taking arguing that the charges that have been brought are in disregard of the procedure laid down under the anti-corruption and Economic Crimes Act Section 35. Referring to a letter dated 29th March, 2016 addressed to the CEO of Ethics and Anti-corruption Commission, Mr. Kiogora states that the DPP gave a consent that Cleophas Naibei be charged with 2 limbs of Corruptly receiving a benefit and a 2nd similar charge. That in the same letter the DPP recommended that Benson Sindani be charged with malicious damage to property and a fourth charge of threatening an Ethics and anti-corruption officer. Mr. Kiogora states that the charges before court have added a new charge of conspiracy and removed the charge of receiving. He says that they have not been served with a letter from DPP and that offends Section 35 of the Act and the charges should be struck out.

Opposing the P.O. the prosecution asked the court to find that there is no charge sheet before the court and that what is submitted is pure speculation of what may be before the court. Further that accused 1 took plea way back in the year 2015 and today what is before court is for consolidation and

bringing in a new charge to the 2nd accused person which has not been done. He sought that they be allowed to take plea and thereafter that the court may consider the validity of the charges.

I have addressed myself to the P.O. Section 35 of the Act gives a lengthy procedure on how matters should be prosecuted. Mr. Kiogora however does not clearly point out which procedure has been flaunted.

I find that the P.O is a mere delaying tactic and direct that consolidation of the charges and plea taking do proceed as preferred by the prosecution.

Although in this age of disclosure the prosecution court say that there is nothing before court given that they are supposed to serve the defence with the charge sheet even prior to plea taking, still it is not clear what procedure the defence claims is flaunted. I direct that plea taking do proceed. A.C 3/2015 marked as consolidated with Cr. 1100/2016 both to read A.C 3/2015.

H. NDUNGU

C.M.

Court -

Ruling delivered in open court this 12th day of June, 2017 in presence of M/s

Muua holding brief for Kiogora Mugambi for the accused persons.

H. NDUNGU

C.M.

12/6/2016

Court – Charge Read over and every element explained to each accused who each replies:-

Count 1:

Accused 1 – Not guilty.

Accused 2: Not guilty.

Count 2:

Accused 1 – Not guilty.

Count 3:

Accused 1: Not guilty.

Accused 2: Not guilty.

Count 4

Accused 2 – Not guilty.

Count 5:

Accused 2: Not guilty.

Hearing 11/9/2017.

Bond terms as already in place.

H. NDUNGU

C.M.

12/6/2017

Court – Accused 2 to deposit cash bail Kshs. 30,000/= or remanded in custody. Mention on 26/6/2017.

H. NDUNGU

C.M.

12/6/2017

M/S Muua – I pray for alternative of surety.

H. NDUNGU

C.M.

Order – Accused 2 may execute personal bond of Kshs. 200,000/= with one surety of like amount or remanded in custody. Mention 26/6/2017. Accused 1 to attend mention date.

H. NDUNGU

C.M.

12/6/2017

12/6/2017

Coram

H. Ndungu – Chief Magistrate

Prosecutor – Namiti

Court Clerk: Mungai

Prosecutor – Its for surety examination.

H. NDUNGU

C.M.

Surety on oath states in Kiswahili -

No. 64688 P.C PATRICK MAKAU. I am stationed to CID Meru North. I am telephone No.0725670215. I am of Address Box 119 MERU.

I wish to stand surety for Benson Sindani. He is my friend and workmate. I know the charges he is facing. I am also aware of the bond terms he was granted of Kshs. 200,000/= with surety. I understand my duty to ensure he attends court. If he fails I will pay the sum of Kshs. 200,000/=. I know the court may also jail me. I am offering as surety my payslip.

Thats ll.

H. NDUNGU

C.M.

Prosecutor – No objection.

H. NDUNGU

C.M.

Order – Surety approved.

H. NDUNGU

C.M.

12/6/2017

28/6/2017

Before: Hon. H.N. Ndungu (Miss) – Chief Magistrate

Prosecutor – Musyoka

Court Clerk: Maina

Accused – absent

Kiogora Mugambi for the accused -

We had written a letter to parties available dates in June and July. Its an old Anti-corruption matter. I will inform them of change of dates.

H.N. NDUNGU

C.M.

Order – Hearing rescheduled 17/7/2017.

H.N. NDUNGU

C.M.

28/6/2017

17.7.2017

Before: Hon. Mrs. L. Ambasi – Chief Magistrate

Kinyua for state

Court Clerk: Faith

Accused – Both present. Trial court away. Mention 31/7/2017

L. AMBASI

C.M.

17/7/2017

31/7/2017

Before: Hon. H.N. Ndungu (Miss)– Chief Magistrate

Prosecutor – Kinyua

Court Clerk; Maina

Accused – (On bond) – Both present

Language - - Kiogora

Trial court on official duties. Hearing 14/8/2017 court 1.

L. AMBASI

C.M.

31/7/2017

14/8/2017

Before: Hon. H.N. Ndungu – Chief Magistrate

Prosecutor – Musyoka

Court Clerk: Maina

Accused – 1 and 2 – present

Kiogora for both accused

Prosecutor – I am not ready to proceed. The investigating officer told me that according to their diary the matter is for hearing on 1st September. There may have been confusion of dates because that is the date that was initially give. We seek a near date.

H.N. NDUNGU

C.M.

Kiogora – No objection.

H.N. NDUNGU

C.M.

Order – Hearing 9/10/2017.

H.N. NDUNGU

C.M.

9/10/2017

Before: Hon. L. Ambasi – Chief Magistrate

Kinyua for state

Court Clerk: Faith

Accused (OB) present

Kyeli holding brief complainant

Mwanzia – I am replacing Kiogora

Court – Trial court away. Hearing on 16/11/2017

L. AMBASI

C.M.

9/10/17

16/10/2017

Before: H. Ndungu Miss

Court Prosecutor – Musyoka

Court Clerk; kamau

Accused – present

Miss Njenga holding brief for Mwanzia for both accused.

H.N. NDUNGU

C.M.

Prosecutor – We have received a letter from DPP dated 6th October, 2017.

Our offices considered matter withdrawn under section 87 (a) CPC.

Reasons are that this matter is affected by Cr appeal 102/2016 which was heard and decided consolidated with Cr. Appeal 90/2016.

Eng. Michael Kamau for state – I have a copy of that letter. I pray the charges be withdrawn under **section 87 (a) CPC**.

H.N. NDUNGU

C.M.

Ms Nganga – We are opposed to withdrawal under **section 87 (a) CPC**. We propose withdrawal under **section 202 CPC**.

H.N. NDUNGU

C.M.

Prosecutor – The directions from our office are clear. We seek withdrawal under **section 87 (a) CPC**. Only the office of the DPP has power to terminate matters.

H.N. NDUNGU

C.M.

Order – Charges marked as withdrawn under **section 87 (a) CPC**.

Each accused informed they may be recharged.

H.N. NDUNGU

C.M.

16/10/2017

I Certify this to be a true copy of the original

Magistrate
Meru Law Courts

Date.....