



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

MISCELLANEOUS CRIMINAL APPLICATION NO. 20 OF 2018

TIMOTHY MAUNDA MBITI.....APPLICANT

VERSUS

WINSTON KIAMBI MURUNGI

THE DEPUTY COUNTY COMMISSIONER

BUTULA SUB-COUNTY1ST RESPONDENT

PAUL ROP

THE DEPUTY COUNTY COMMISSIONER

SAMIA/FUNYULA SUB-COUNTY2ND RESPONDENT

JAMES KARERI THUO

THE ASSISTANT COUNTY COMMISSIONER

FUNYULA DIVISION3RD RESPONDENT

THE DCIO BUTULA POLICE DIVISION4TH RESPONDENT

THE OCS BUMALA POLICE STATION 5TH RESPONDENT

THE OCS FUNYULA POLICE STATION 6TH RESPONDENT

THE ATTORNEY GENERAL 7TH RESPONDENT

THE DIRECTOR PUBLIC PROSECUTIONS 8TH RESPONDENT

RULING

1. **Timothy Maunda Mbiti**, the applicant herein, has moved the court by way of Chamber Summons dated 23rd August, 2018 under Articles 165(3) 2, 10, 19, 20 (1), (2), (3), 21, 22 and various other Articles of the Constitution of Kenya, 2010. He is seeking orders as follows:

a) That this court do issue summons to the 1st to 4th respondents requiring them to render a proper inventory of the confiscated Betting and Gaming Machines belonging to the applicant.

b) That this court do issue an order to the 5th and 6th respondents to take charge collect/or gather the machines from the 1st and the 2nd respondents and record them in the occurrence Books at Bumala and Funyula police stations pending the hearing and determination of this application.

c) That this court do issue an order to the 1st and 2nd respondents or their subordinate officers and any other person acting under or through them to immediately and forthwith release the Betting and Gaming machines to the applicant pending the hearing and determination of this application.

d) That the cost of this application be borne by the respondents.

2. The application was supported by a sworn affidavit of the applicant and was premised on the following grounds:

a) That the applicant herein is a businessman involved in operation of gaming machines within Busia County and other counties within the Republic of Kenya.

b) That on 3rd august 2018, Criminal Investigation Officers raided his business premises at Bumala and confiscated his six Betting and Gaming Machines.

c) That on 9th august 2018, a group of Administration Police officers raided his business premises and seized his three Slot Machines.

d) That there were no charges preferred against him.

3. The applicant though he described himself as a businessman, did not exhibit any license allowing him to conduct the betting and gaming business in Busia County. The applicant had the onus of establishing before the court that he was running a bona fide business. Section 53 of the Betting, Lotteries and Gaming Act provides:

(1) A person who—

(a) uses or permits the use of an unauthorized gaming machine; or

(b) knowingly allows premises to be used for the purpose of gaming by

means of an unauthorized gaming machine; or

(c) knowing or having reasonable cause to suspect that premises would be used for gaming by means of an unauthorized gaming machine—

(i) caused or allowed the machine to be placed on the premises; or

(ii) let the premises, or otherwise made the premises available, to a person by whom an offence in connection with the machine was committed,

shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months, or to both.

(2) In this section, “unauthorized gaming machine” means a gaming machine in respect of which a permit has not been issued under section 54.

4. Part VII of The National Police Service Act lays down the duties of the police to include investigations, prevention and detection of crime. The applicant has not established a prima facie case to warrant the issuance of the orders sought. To do so, would be tantamount to curtailing the operations of the police to maintain law and order.

5. The application is in want of merits and is accordingly dismissed.

DELIVERED and SIGNED at BUSIA this 29th day of April, 2019

KIARIE WAWERU KIARIE

JUDGE.