



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**CRIMINAL PETITION NO. 59 OF 2019**

**FRANCIS INGOSI .....APPLICANT**

**VERSUS**

**THE DCIO - KAKAMEGA.....1<sup>ST</sup> RESPONDENT**

**THE DCIO - MUMIAS.....2<sup>ND</sup> RESPONDENT**

**THE DPP – KAKAMEGA.....3<sup>RD</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL - KAKAMEGA ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**ARNOLD ONG’ANDA ..... INTERESTED PARTY**

**RULING**

1. The applicant herein has filed a notice of motion dated 24<sup>th</sup> June, 2019 seeking for orders that:-

(1) Spent.

(2) Pending the hearing of the present application interpartes a conservatory order of injunction do issue restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents from arresting, incarcerating in custody and charging the applicant based on complaint by the 3<sup>rd</sup> interested party on the management of Ong’anda & Associates Advocates’ firm.

(3) Pending the hearing of this petition a conservatory order of injunction do issue restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents from arresting, incarcerating in custody and charging the petitioner based on complaint by the interested party on the management of Ong’anda & Associates Advocate’s firm.

2. The application is premised on the grounds on the face of the application and is supported by the affidavit of the applicant. The applicant depones in his affidavit that he is employed by the interested party as a clerk to the interested party’s law firm, Ong’anda & Associates Advocates. That in May, 2019 the interested party abandoned his law offices at Kakamega and relocated to Nairobi. That the applicant was forced to relocate from the office and carried away some files. That he has continued receiving money and remitting fees to the interested party who has given him general powers to be opening files.

3. The applicant avers that the interested party owes him salary for the period that he has worked for him. That prior to the relocation of the interested party the petitioner had introduced a client to the interested party who had deposited Ksh. 2.5 million with the interested party. That after the relocation of the interested party the applicant inquired about the whereabouts of the money for the client. That the interested party became hostile to him and promised to teach him a lesson. That on the 19<sup>th</sup> June, 2019 the applicant learnt that the interested party had lodged a complaint with the DCIO Kakamega and DCIO Mumias that the applicant was using his name without his knowledge.

4. The applicant contends that the dispute between him and the interested party is failure by the interested party to pay him salary and the inquiry on the sum of Ksh. 2.5 million. That the interested party wants to use the police to avoid liability and to embarrass him. That he is afraid that he will be arrested by the agents of the respondents who have severally frequented his house in an attempt to arrest him. That the impending arrest is based on malice and falsehood.

5. The petition is brought under Article 29 of the Constitution which grants every person the right to freedom and security of the person and the right not to be deprived of his freedom arbitrarily without just cause.

6. It is now an established principle of law that anyone who wishes the court to grant a relief for violation of a right or fundamental freedom, must plead in a precise manner the constitutional provisions said to have been violated or infringed, the manner of infringement and the jurisdictional basis for it. This was stated in the case of *Anarita Karimi Njeru –Vs- Republic (No.1)-[1979] KLR 154* where the Court stated:-

**“If a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.” (See also Meme -Vs- Republic & another [2004] 1 KLR 637)**

7. This principle was emphasized by the Court of Appeal in *Mumo Matemo –Vs- Trusted Society of Human Rights Alliance [2014] eKLR*, where it stated that:-

**“...the principle in Anarita Karimi Njeru (supra) underscores the importance of defining the dispute to be decided by the court... Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in Anarita Karimi Njeru (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle”**

8. The applicant is seeking for an injunction to stop arrest by the DCIO Kakamega and DCIO Mumias and also to stop the office of the Director of Public Prosecutions Kakamega from charging him over any complaint by the interested party on the management of Ong’anda & Associates Advocates firm.

9. The principles under which orders of injunction can issue are well settled. The applicant is required to establish a *prima facie* case with a probability of success. Secondly show that the damage to be suffered unless the orders of injunction are issued cannot be compensated by way of damages and thirdly that if the court is in doubt to decide the matter on a balance of probabilities – See **Giella –Vs- Cassman Brown & Co. Limited (1973) EA 358.**

10. The applicant has not placed any evidence before the court to show the nature of the report that the interested party may have made with the police. He only says that he has been informed by a friend that the interested party has made a report to the police that the applicant is using his name illegally. Whether this is true or not has not been established.

11. The applicant says that he is an employee of the interested party. He has not laid any evidence before the court to prove so. He says that the interested party has given him general powers to be opening files. He has not attached any document to prove so.

12. The applicant says that the interested party has closed his offices at Kakamega but that he, the applicant, is retaining some files for the interested party. That he has been opening files on behalf of the interested party, receiving money and sending it to the interested party through Mpesa. If the interested party has closed his offices at Kakamega, on what basis is the applicant retaining the advocate’s files? How does he continue to open files on behalf of the interested party when the interested party has closed his offices at Kakamega? Is it legal for the applicant to continue opening files in the name of the advocate when the advocate has closed his offices at Kakamega? Are the activities of the applicant protectable rights? If so what rights have been infringed? There were no answers to these questions in the applicant’s deposition.

13. It is the duty of the police to investigate commission of crimes. I am not satisfied that the applicant has established a *prima facie* case with a probability of success to warrant this court to issue the orders of injunction being sought. The orders sought in the notice of motion dated 24/6/2019 are thereby declined. The interim orders issued on 2<sup>nd</sup> July, 2019 were not warranted and are thereby vacated.

**Delivered, dated and signed in open court at Kakamega this 1<sup>st</sup> day of August, 2019.**

**J. NJAGI**

**JUDGE**

In the presence of:

Mr. Arwanda holding brief for Munyendo for petitioner Miss Omondi for respondent

Petitioner - absent

Court Assistant - George

14 days right of appeal.