



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISCELLANEOUS CRIMINAL APPLICANT NO 194 OF 2017

ALPHONCE PETER MANYELE.....APPLICANT

VERSUS

FAHIMI AHMED SHEIKH

JIBRIL AHMED SHEIKH

THE O.C.S DIANI POLICE STATION.....RESPONDENTS

THE D.C.I.O DIANI POLICE STATION

THE INSPECTOR GENERAL OF POLICE

THE HON. ATTORNEY GENERAL

RULING

1. Vide a Notice of Motion application dated 11th October, 2017, the Applicant, ALPHONCE PETER MANYELE sought for the following orders;

(a) the application to be certified as urgent and service to be dispensed with the first instance;

(b) the Honourable court be pleased to stay and/or bar any criminal proceedings against the applicant in relation to the complaints made by 1st and 2nd Respondents pending the hearing and determination of this application;

(c) the Honourable court be pleased to order the 1st, 2nd, 3rd and 4th Respondents jointly and severally, to release the applicants original log book for motor vehicle registration No KBK 139 W;

(d) this Honourable court be pleased to order the 3rd and 4th respondents to release the sum of Ksh 50,000/= held on account of alleged charges to be brought against the applicant at Kwale Law courts since 2017;

(e) the honourable court be pleased to order the Respondents jointly and severally, to cease harassing the Applicant herein;

(f) the Respondents be ordered to pay general damages for malicious prosecution.

2. The application is premised on the grounds on the face of the application and supporting affidavit of ALPHONCE PETER MANYELE.

3. The application was certified urgent, Applicant ordered to serve the respondents and for a hearing date to be fixed in the registry on priority basis. The hearing date of the application was fixed for 23.10.2017.

4. And on 16.10.2017, the applicant filed another notice of motion application together with supporting affidavit annexure marked "APM-5" under certificate of urgency seeking for warrant of arrest issued by Kwale Law courts lifted and the said proceedings in Cr case No. 713 of 2017 stayed.

5. The application is premised on the grounds on its face and supporting affidavit of the Applicant.

6. The application was also certified as urgent and prayer 1 and 2 of the application granted. The hearing was fixed for 23rd October, 2017.

7. On 23.10.2017, when the application came up for hearing, counsel for the applicant, Ms Mukoya indicated that they had not served the 1st and 2nd Respondents with the same since they had not been able to trace them. She also stated that they had also not been served with responses from 3rd to 6th Respondents although she had seen a replying affidavit by them.

8. M/s Ocholla, counsel for the state confirmed that they had been served with the application dated 11th .10.2017 and that they had filed a replying affidavit and grounds of opposition on 19.10.2017, which they were yet to serve upon the Applicant, 1st and 2nd Respondents . She undertook to serve them with the same before close of business that day. She further indicated to court that they had not been served with the application dated 16.10.2017, to which Ms. Mukoya, counsel for the Applicant responded by saying that they had served 3rd and 6th Respondents and there was an affidavit to confirm the same.

9. The court proceeded to give directions to the parties to serve each other with their various documents and fixed the case for mention to confirm this before fixing a hearing date.

The matter came up for mention four times to confirm service by parties upon each other and on 20.3.2018, the applications were fixed for hearing for 21st May, 2018.

10. Today, the 21st May, 2018 the applications came up for hearing, the same having been fixed in the presence of counsel for the Applicant and the state, who represents 3rd to 6th Respondents.

11. However, neither the applicant and or their counsel attended court for the hearing. They also did not send an explanation or representation to explain their absence. The 1st and 2nd Applicants were also absent without any explanation or representation.

12. In the circumstance, there being no appearance or explanation by the applicant, 1st and 2nd Respondents and or their counsel, the application dated 11.10.2017 and 16.10.2017 be and are hereby dismissed respectively.

Costs to be in the cause.

Ruling delivered, signed and dated this 21st day of May, 2018.

LADY JUSTICE D. O. CHEPKWONY

In the presence of:

M/s Ocholla, counsel for 3rd to 6th Respondents

No appearance by counsel for Applicant

No appearance for counsel for the 2nd and 3rd Respondents

No appearance by Applicant, 1st and 2nd Respondents

C/clerk- Beja