



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

MISC. CRIMINAL APPLICATION NO. 20 OF 2018

IN THE MATTER OF AN APPLICATION UNDER ARTICLE 165 (3) 2, 10, 19, 20 (1) (2) (3) (4), 21 AND 22 OF THE CONSTITUTION OF KENYA (2010)

AND

IN THE MATTER OF THE PROTECTION OF THE CONSTITUTIONAL RIGHTS ENSHRINED IN CHAPTER FOUR OF THE CONSTITUTION IN SO FAR AS THE PETITIONER'S CONSTITUTIONAL RIGHTS UNDER ARTICLES 27, 28, 29, 31, 40 OF THE CONSTITUTION OF KENYA (2010)

AND

IN THE MATTER OF NATIONAL GOVERNMENT CO-ORDINATION ACT

(CHAPTER 183 LAWS OF KENYA), THE CHIEFS' ACT (CHAPTER 128 LAWS OF KENYA), NATIONAL POLICE SERVICE ACT

(ACT NO 11A OF 2011)

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013)

AND

IN THE MATTER OF SECTIONS 118, 119, 120 AND 121 OF THE CRIMINAL PROCEDURE ACT (CHAPTER 75 LAWS OF KENYA)

IN THE MATTER OF AN APPLICATION

BETWEEN

TIMOTHY MAUNDA MBITIAPPLICANT

VERSUS

WINSTON KIAMBI MURUNGI,

THE DEPUTY COUNTY COMMISSIONER

BUTULA SUB-COUNTY 1ST RESPONDENT

PAUL ROP,

THE DEPUTY COUNTY COMMISSIONER

SAMIA/FUNYULA SUB-COUNTY 2ND RESPONDENT

JAMES KARERI THUO,

THE ASSISTANT COUNT COMMISSIONER

FUNYULA DIVISION 3RD RESPONDENT

THE DCIO BUTULA POLICE DIVISION 4TH RESPONDENT

THE OCS BUMALA POLICE STATION 5TH RESPONDENT

THE OCS FUNYULA POLICE STATION 6TH RESPONDENT

THE ATTORNEY GENERAL 7TH RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS 8TH RESPONDENT

RULING

I have considered the application by the applicant under certificate of urgency. I am satisfied that the matter is urgent and ought to be considered expeditiously and ex parte in the first instance I certify the matter as urgent and direct that it be considered during the Recess.

On the prayers in the Chamber Summons, I note that the applicant has not sought any temporary orders – All the prayers seek for substantive mandatory orders which can only be made at the inter partes stage.

Accordingly, I direct the Applicant to serve the Respondents with the application for inter partes consideration before Hon. Riech, J., in Bungoma High Court, being the Regional duty Judge on 4.9.2018.

Orders Accordingly,

Dated, Signed And Delivered at Siaya This 31st Day of August, 2018.

R. E. ABURILI

JUDGE