



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MALINDI

CONSTITUTIONAL PETITION NO. 15 OF 2017

CANOBBIO PIERO.....PETITIONER

VERSUS

DIRECTOR OF IMMIGRATION SERVICES.....1ST RESPONDENT

MINISTER FOR INTERIOR & CO-ORDINATION

OF NATIONAL GOVERNMENT.....2ND RESPONDENT

RULING

1. In the Petition dated 23rd May, 2017 the , Canobbio Piero seek various orders against the Director of Immigration Services, the 1st Respondent and the Minister for Interior & Co-ordination of National Government, the 2nd Respondent.

2. At the time of filing the Petition the Petitioner also filed a Notice of Motion seeking orders that: -

“1. **THAT** for reasons to be certified in writing, Your Petitioner’s Application herein be certified as urgent and service be dispensed with in the 1st instance owing to the urgency.

2. **THAT** a Conservatory Order does issue restraining the Respondents from clogging or prohibiting the Petitioner’s entry back into Kenya upon the Petitioner’s intended brief exit here-from using the Petitioner’s Italian Passport No. YA8542166, based upon the Respondent’s 2008 declaration classifying the Petitioner as being a Prohibited Immigrant.

3. **THAT** leave be granted to the Petitioner to apply for an Order of Prohibition directed against the Respondents prohibiting them from inhibiting or prohibiting the Petitioner’s exit and entry into Kenya based upon 2nd Respondent’s declaration in 2008 that continues to be maintained in Kenya’s border control system and database classifying the Petitioner as a Prohibited Immigrant.

4. **THAT** leave be granted to the Petitioner to apply for an Order for Mandamus directed at the 1st and 2nd Respondents to forthwith release Kenyan Passport Number A469810 to the Petitioner.

5. **THAT** costs be provided for.”

3. Prayers 1, 3 and 4 of the application have been dealt with. What remains for the consideration of this court are therefore prayers No. 2 and 5.
4. The application is supported by the grounds on its face and a supporting affidavit sworn by the Petitioner/Applicant on 23rd May, 2017.
5. In brief, the Applicant's case is that he is a Kenyan citizen holder of Passport No. A469810 issued to him on 1st October, 1998, Kenyan Identify Card No. 21258504 and KRA PIN Certificate No. A002635656E. He avers that he is tax complaint paying taxes to the Kenyan Government. That he arrived in Kenya in 1986 and has since then continuously invested in the country.
6. His averment is that sometimes in 2008 business rivals hatched a plan to have him deported from Kenya. A letter was written to the then Minister of Immigration, who without investigating the allegations, confiscated his passport and identity card, declared him a prohibited immigrant and ordered his deportation.
7. He avers that the publicly stated reasons for his deportation was that he had committed several crimes locally and was also a wanted fugitive in Italy.
8. It is the Applicant's case that he moved to the High Court at Nairobi vide Misc. Civil Application No. 259 of 2008 Canobbio Piero v The Principal Immigration Officer & 4 others where he successfully sought and obtained orders quashing his declaration as a prohibited immigrant and his deportation.
9. It is the Applicant's case that the decision of the Minister to deport him was keyed into the Border Control System for immediate compliance to prevent his entry upon his deportation from Kenya. The Applicant avers that despite the court order quashing the Minister's decision to declare him a prohibited immigrant and deport him, he has never been able to travel outside Kenya because attempts to do so may be jeopardised by the border control system data which continue to hold that he is a prohibited immigrant.
10. It is the Applicant's case that he has persistently been pleading with the respondents to return his confiscated passport and identity card but it was only in 2016 that his identity card was returned to him with a reissue date of 9th June, 2016. That the respondents have to date continued to hold onto his Kenyan Passport. It is the Applicant's case that although the respondents indicated in 2014 that they would make a decision, they have not done so.
11. He urges this court to allow his prayer for a conservatory order so that he can travel to Italy to attend to his ill and aging mother and to also attend to his international businesses. According to the Applicant, the conservatory order will ensure that once he travels he can re-enter Kenya without much hassle from the respondents.
12. The respondents did not reply to the application although there is an affidavit of service on record showing that they were aware that the matter would be heard on 29th June, 2017.
13. I have carefully perused the application before this court and find that the same is in the nature of an application for a declaration that the respondents have acted in contempt of court.
14. I am the one who heard and delivered judgement in the Applicant's judicial review application in Nairobi Civil Miscellaneous Civil Application No. 259 of 2008. In the application the Applicant sought orders as follows:-

“1. THAT a Judicial Review Order of Certiorari do issue directed at the Respondents to Quash the Declaration made on 2nd May, 2008 by the 2nd Respondent declaring the Applicant a member of the prohibited class and a Prohibited Immigrant.

2. THAT a Judicial Review Order of Certiorari do issue directed at the Respondents to

Quash the Declaration made on the 2nd May, 2008 by the 2nd Respondent declaring the Applicant's presence in Kenya contrary to national interest and that he be removed from Kenya to his country of origin ITALY immediately and further that the Applicant remain in prison custody while arrangements for removal are being undertaken.

3. THAT a Judicial Review Order of Prohibition do issue directed at the Respondents to cease henceforth from declaring the Applicant a member of the prohibited immigrants or interfering with his constitutional citizenry rights as a lawful citizen of Kenya.

4. THAT a Judicial Review Order of Prohibition do issue directed at the Respondents to prohibit the Respondents from arresting, detaining and/or deporting the Applicant from Kenya or in any other way interfering with the Applicant's constitutional citizenry rights as a lawful citizen of Kenya.

5. THAT costs of the application be provided for.”

15. My decision of 18th May, 2012 was that:-

“Considering the facts placed before the court and more so the fact that the Applicant has invested heavily in Kenya and has lived in this country for a long period of time, I agree with the Applicant that he is entitled to the orders of certiorari sought. Prayers 1 & 2 of the application are therefore allowed as prayed. The Applicant has also asked me to prohibit the respondents from declaring him a prohibited immigrant and from deporting him from Kenya. Agreeing with the Applicant would amount to this court taking over the statutory duties of the respondents and more so the 2nd Respondent. This court cannot prohibit the respondents from carrying out their statutory duties. I will therefore modify prayers 3 & 4 so that the respondents are prohibited from declaring the Applicant a prohibited immigrant or deporting him from Kenya without complying with the rules of natural justice.”

16. The orders prayed for and granted by the court were clear enough and need no further illumination by subsequent litigation. They need no propping by another court order.

17. In approaching the court in the manner he has done, the Applicant seems to be asking the court to reinforce orders issued earlier on. Courts do not operate that way. Parties should not file a plethora of cases involving the same parties and concerning the same disputes. In my view, the instant application is an abuse of the court process. It must be dismissed and it is so dismissed. As the same was not defended, I will not make any orders on costs.

Dated, signed and delivered at Malindi this 26th day of July, 2017.

W. KORIR,

JUDGE OF THE HIGH COURT