



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL DIVISION

CRIMINAL MISC. NO. 33 OF 2014

JOSECK LUBANGA OMUKWEYI.....APPLICANT

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTION.....1ST RESPONDENT

THE OCS BUTERE POLICE STATION2ND RESPONDENT

R U L I N G

Introduction

1. The petitioner herein filed a petition on the 12.05.2014 which was amended on the 21.10.2015. In the petition he claimed that his right of freedom under article 29 was threatened by an intended arrest and that he is entitled to inherent dignity and the respect thereof. He sought an order of prohibition restraining the respondent from arresting and charging him.
2. Simultaneously with the petition the petitioner also filed a chamber summons dated 13.05.2014 which was certified urgent and conservatory orders of injunction granted restraining the respondents from arresting and charging him pending the hearing and determination of the application.
3. I note from the record that those orders were only extended once on the 19.06.2014 to the 16.07.2014 and thereafter the said orders lapsed. There has been a delay in prosecuting the petition which this court noted was occasioned by the applicants counsel on 17.05.2015 who failed to file and serve his submissions as ordered by the court. The amendment was also done after some months which has also accessioned a delay in the determination of the petition.

The Petition

4. The petitioner is a teacher at [particulars withheld] Primary School. On 13.01.2014 to 17.01.2014 he was on duty as a duty master. On 9.05.2014 the police went to his school and he heard them mentioning his name and some allegations were made against him that he had assaulted a student by the name H N on 17.03.2014. Fearing for his life he fled from the school. He was apprehensive after he was informed by other staff members who remained behind that the police had vowed to teach him a lesson. He claims that the same people have been visiting his home in a bid to arrest him and he states that he is afraid of his safety and requires this court's protection. He denies assaulting the student and adds that no report of that nature was given to the school.

5. He states that he is ready to face the law to prove his innocence though he is apprehensive that his right to freedom under Article 29 will be violated and that he may be harmed if arrested.

Response

6. The petition is opposed. There is a replying affidavit sworn by No. 77090 SGT Etiir Lopeyok Patrick. He states that they received a complaint from one J W A who claimed that his son H N W had been assaulted by the petitioner.

7. The report was booked by PC Cheserem as OB No 14/17/4/2014. He investigated the allegations and found that the student had a genuine complaint and recorded his statement and the father's statement. He also recorded the witnesses' statements. Treatment notes were also given to him after which he issued the complainant's father with an arrest warrant.

8. When the administration police went to arrest the petitioner they found that he had been transferred to a different school and they could not trace him. He was also served with a court order dated 22.05.2014 by OCS Butere to stop the arrest.

9. He maintains that the prosecution has a good case and reasons to charge the petitioner and it would only be fair if the petitioner is charged. He adds that the applicant's fundamental rights have not been infringed.

Determination.

10. I have considered the pleadings on record and the submissions by petitioner. The basis of the petition is that the rights of the petitioner will be infringed if he is arrested by the police. This allegation is based on an apprehension of an arrest.

11. From the evidence on record the police received a complaint which was genuine. They investigated the same and found that they had evidence to charge the petitioner in a court of law. It should be noted that investigations are part and parcel of our justice system and before charges are preferred against any person, investigations must be carried out.

12. The petitioner alleges that his rights will be violated but I find that there is a genuine complaint with the police and it would be in the interest of justice if the complaint is properly investigated.

13. Without going into any further details, I find that the petitioner herein who has stated that he is ready to face the law should visit the police station and record his statement.

14. There is therefore no merit in the petition and the same is dismissed.

Orders accordingly.

Ruling delivered, signed and dated in open court at Kakamega this 25th day of July 2017.

RUTH N. SITATI

JUDGE

In the presence of;-

Mr. Munyando (present).....For Applicant

Miss Tarus -(present).....1st and 2nd Respondent

Polycap.....Court Assistant