

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

PETITION NO. 7 OF 2016

PATRICK GITONGA RIUNGU.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

RULING

The petition dated 21/7/2016 is brought by one **Patrick Gitonga** against the Respondents – **Inspector General of Police, Director of Criminal Investigation and Director of Public Prosecutions** seeking orders conservatory orders be issued against the Respondent or the agents/servants from arresting, harassing, torturing or interfering with the petitioner and secondly, that the petitioner be granted anticipatory bail pending arrest.

The application is brought pursuant to **Articles 165 (3) (b) 49 (1) 23, 29 and 258 of the Constitution.**

Article 49 (1) does not apply to this application. Ms. Rimita submitted that the Police have been visiting the petitioner at his home, interfering with his privacy, his right to freedom and his right to earn a living and yet they have not disclosed any offence that he may have committed. He therefore moved this court for protection of his rights.

The application was opposed by Learned Counsel, Mr. Mulochi, who urged that no right is absolute as there are limitations to most of the rights; that the police have duties to perform and should not be impeded; that petitioner should present himself to the police to sought out whatever issues there are.

The powers of the DPP are provided for under **Article 157 of the Constitution.** They include directing the Inspector General of Police to investigate any allegation, institute and undertake criminal proceedings against anybody. These powers have to be exercised with due regard to public interest of administration of justice and avoid any abuse of the legal process. It follows that if there are any suspicions that the petitioner has committed an offence, the DPP and others under his administration have a right to investigate. However, they have to do so in accordance with the law. The court will be reluctant to interfere in the DPP's exercise of its mandate unless it is demonstrated that it is against public interest, an abuse of the legal process. However, acts of harassment of the individual should not be entertained and if any, should be stopped forthwith and investigations if any, be done in an orderly manner. At this stage, since the court may not have all the facts, all that it can do is order that any threats to breach of petitioner's rights be protected for a limited period. The petitioner should not be arrested, harassed in any manner during that period. He can report to the police station and the police do carry out their mandate if necessary. Petitioner to sign his own bond of KShs.100,000/= and report to OCS Meru, on the 1/8/2016 for further directions.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 26TH DAY OF JULY, 2016.

R.P.V. WENDOH

JUDGE

26/7/2016

PRESENT

Mr. Mulochi for Respondent

Mrs. Rimita for Petitioner

Ibrahim, Court Assistant