



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIVASHA**

**MISCELLANEOUS CRIMINAL NO. 2 OF 2016**

*(Formerly Nairobi HCC CR. Misc. App. No. 336 of 2016)*

**JOSEPH LEKODI OLE TELEU.....APPLICANT**

**-VERSUS-**

**RICHARD LEIGH SMITH.....1<sup>ST</sup> RESPONDENT**

**CABINET SECRETARY, INTERNAL SECURITY.....2<sup>ND</sup> RESPONDENT**

**INSPECTOR GENERAL.....3<sup>RD</sup> RESPONDENT**

**THE PRINCIPAL IMMIGRATION OFFICER.....4<sup>TH</sup> RESPONDENT**

**HON. DIRECTOR OF PUBLIC PROSECUTION.....5<sup>TH</sup> RESPONDENT**

**R U L I N G**

1. I have perused the application filed on 14<sup>th</sup> September 2016. The same was brought by one **Joseph Lekodi Ole Teleu** who describes himself in his affidavit as a resident of Trans-Mara Sub County of Narok County. The application is expressed to be brought under Section 33 (1) f, g, h, p, 1,; 33(3); 34 (2) and (4); 43 (1-7); 53 (1) and 2 of the citizenship and Immigration Act of 2011.

2. The application was presented as a Miscellaneous Criminal Application and seeks the following orders.

**“a) THAT the 1<sup>st</sup> Respondent be investigated by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondent of his activities in Kenya.**

**(b) THAT the Honourable Court be pleased to order the 1<sup>st</sup> Respondent deported to his county of origin.” (sic)**

3. Owing to the peculiar nature of the application this court invited the parties to address the question of its jurisdiction to grant the orders sought against the five Respondents, who are Richard Leigh Smith, Cabinet Secretary, Internal Security, the Inspector General, the Principal Officer and the Director of Public Prosecution, respectively.

4. Despite this court’s direction on 22/11/2016 that Mr. Sagwe for the Applicant be personally present to address the court on 25/11/2016, he did not attend. The court rejected the application to adjourn the

proceedings to 9/12/2016 for recorded reasons. Mr. Obino who was holding his brief had no further instructions and therefore did not address the court.

5. Mr. Ritho for the 1<sup>st</sup> Respondent hinged his submissions on Section 52 of the Citizenship and Immigration Act (the Act) and asserted that the prosecution of offences under the Act falls under the purview of immigration officers and that the court in this case cannot order deportation of the 1<sup>st</sup> Respondent.

6. Mr. Koima for the 2<sup>nd</sup> to 5<sup>th</sup> Respondent reiterated this view and further challenged the *locus standi* of the Applicant. He submitted that the mandate of issuance of deportation orders lies with the 2<sup>nd</sup> Respondent. In his opinion, this application amounts to an abuse of the court process.

7. I have considered the submissions and perused the provisions cited in the application herein. First of all the application herein is not a criminal prosecution as anticipated in Section 52 of the Act. Secondly, none of the sections invoked in the application cloth this court with jurisdiction to grant the prayers sought within the confines of the particular motion before me. The power to deport undesirable foreigners is vested in the Cabinet Secretary concerned under Section 43 of the Act.

8. Finally, there is no provision in the act for a private citizen to approach the court in the manner this Applicant has done. Notably the Applicant has generally cited the Constitution, the Penal Code and the Criminal Procedure Code without specifying the provision which allows him to present a motion of this nature.

9. This application is not only defective and incompetent. It also amounts to a waste of the court's time and is an abuse of the court process. The motion filed on 14/9/2016 is struck out with costs to the Respondents.

Delivered and signed at Naivasha this **25<sup>th</sup>** day of **November, 2016**.

In the presence of:-

Mr. Ritho for 1<sup>st</sup> Respondent

Mr. Koima for the 2<sup>nd</sup> Respondent

Court Assistant – Barasa

**C. MEOLI**

**JUDGE**