



**REPUBLIC OF KENYA**

**IN THE HIGH OF KENYA AT HOMA BAY**

**CRIMINAL MISC. APPLICATION NO.28 OF 2016**

**LAWRENCE ODEMBA ABUDI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. LAWRENCE ODEMBA ABUDI (the Applicant) filed an application by way of a notice of motion dated 22<sup>nd</sup> May 2016 seeking orders that he be escorted to MBITA police station so as to book a complaint against culpable person.
2. He deposes in the supporting affidavit dated 2<sup>nd</sup> August, 2016 that on 17<sup>th</sup> November 2013, some persons who are known to him in corroboration with a certain woman raided his house and stole eleven goats valued at Kshs.2500/= each, five fishnets valued at Kshs.4000/= each, an ox-plough valued at Kshs.7000/= each, three yoke chairs valued at Kshs.1500/= each, three sofa sets valued at Kshs.7000/= each and utensils worth Kshs.3000/=.
3. These items were kept at the applicant's home.
4. He also alleges to have been assaulted by a prison officer.
5. At the hearing, the applicant explained that his un-named estranged wife skirted away all his property and he'd liked to be escorted by police to the place where his property is kept so as to retrieve them.
6. He also prays to be transferred to a prison near Mbita, saying he is really suffering at Kibos prison and his viral load is high due to the situation at the prison.
7. In opposing the application, MR. OLUOCH submitted on behalf of the state that at an earlier appearance, the applicant had made claims against the Homa Bay prison officers saying they were not taking him for medicine and he wanted a transfer from KIBOS prison to any prison near home.
8. MR. OLUOCH explained that the applicant has always been taken to hospital whenever required and he produced the proof – his medical records were presented in this court.
9. It is also contended that although MBITA is far from KIBOS, the applicant's real intention is to escape from LAWFUL custody.

10. It is argued that if the applicant wants to report a matter to MBITA police station, he should raise it with the officer in charge at KIBOS GK Prison who has authority to grant persons leave out of the facility under escort. He points out that this application without any indication that opportunity to leave the prison for purposes

11. The application is termed as mischievous and Mr. Oluoch urges court to dismiss it.

12. My own assessment of what applicant seeks is that there are administrative structures within the prison, which the applicant as a subject of the facility ought to make use of before seeking intervention of the court.

13. He has not demonstrated that he has presented his request about being escorted to the police station to make a report about his property and met with rejection.

14. In any event it is not mandatory that the applicant accompanies police to go and search for his property, if his request is made in good faith then I think once he makes a report, the police will follow up in pursuit of his property. His insistence that he ought to –

a) Be taken to Mbita to make a report and accompany police in the search, when considered against the background of his earlier complaint regarding the conditions at Kibos prison and Homa Bay prison, suggest that there are ulterior motives for making this application. I am persuaded that it is not prudent to grant the request and applicant is directed to first make such request through the Officer in charge Kibos prison who would be in a position to respond to it. It is only in the event of refusal that the applicant would then move this court.

15. The applicant seems to have abandoned his complaint about having been assaulted at Homa Bay prison – which complaint does not state when the assault took place or the name of the assailant.

16. The upshot is that this application lacks merit and is dismissed.

**Delivered and dated this 17<sup>th</sup> day of November, 2016 at Homa Bay.**

**H.A. OMONDI**

**JUDGE**