



REPUBLIC OF KENYA

IN THE HIGH COURT AT MIGORI

MISCELLANEOUS APPLICATION NO. 9 OF 2015

BETWEEN

GEORGE OUMA BWANA APPLICANT

AND

OFFICER COMMANDING AWENDO

POLICE STATION 1ST RESPONDENT

INSPECTOR GENERAL OF THE POLICE 2ND RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS 3RD RESPONDENT

RULING

1. The application before the Court is made pursuant to **sections 66, 69, 88 (1)** of the *Criminal Procedure Code (Chapter 75 of the Laws of Kenya)*. It seeks the following orders;

(a). That the Honourable Court be pleased to issue an order directing the 1st and 2nd Respondents to arrest the said Kennedy Otieno Ndede and charge him before court of competent jurisdiction for an offence of assault as provided in the Penal Code (Chapter 63 of the Laws of Kenya).

2. Mr. Sagwe, counsel for the applicant, submitted that the applicant was assaulted by one Kennedy Otieno Ndede on 30th January 2014. He laid a complaint at Awendo Police Station where he was referred for treatment at Awendo Sub-District Hospital where he received medication and was issued with a P3 Form. He states that the OCS, Awendo Police Station has refused to issue warrants of court as required by law hence this application.

3. When the matter came up for hearing, I asked Mr. Sagwe whether it was necessary to join the said Mr. Kennedy Otieno Ndede as a party directly affected by the orders. He said it was not necessary as he could not arrest himself and as it was the duty of the respondents to do so.

4. In my view, the said Kennedy Otieno Ndede is a party directly affected and he ought to have been joined to these proceedings. This court, if it proceeded otherwise, would be abetting a breach of natural justice.

5. On the substance of the application, it must be recalled that the Director of Public Prosecutions, under **Article 157** of the Constitution retains overall authority to commence prosecutions. There is no evidence

that this office has been requested and has declined to prosecute the third party in which case the applicant would have the right to seek leave to prosecute the matter privately.

6. Furthermore, the order sought would be imposing an obligation or burden on the office of the Director of Public Prosecutions to launch a prosecution without him having exercised his discretion to do so.

7. In the circumstances, I reject the Notice of Motion dated 11th April 2014. It is dismissed.

DATED and DELIVERED at MIGORI this 19th day of June 2015

D.S. MAJANJA

JUDGE

Mr Sagwe instructed by Sagwe & Company Advocates for the applicant.

Ms Owenga, Senior Prosecuting Counsel, instructed by the Director of Public Prosecutions.