REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CIVIL CASE NO.1 OF 2011

WELLINGTON SENERWA KALO……APPLICANT

VERSUS

BEN MASAWE & 13 OTHERS…….....RESPONDENTS

RULING

Introduction

The applicant filed three matters at Garissa High Court as follows:

i. High Court Civil Case No. 1 of 2011 in which he has sued 13 defendants seeking damages arising from defamation of his character.
ii. Miscellaneous Criminal Application No. 6 of 2011 seeking orders of this court to transfer Criminal Case No. 24 of 2012 from Hola to any other court for determination.
iii. Miscellaneous Criminal Application No. 7 of 2012 by way of Chamber Summons seeking the same orders as in Misc. Criminal Application No. 6 of 2011.

On 4th July 2012 I called for the three files and after reading them carefully I made my ruling in which I declined to grant the orders transferring Criminal Case No. 24 of 2012 from Hola Court and also directed the applicant to file the defamation case before the Hola Court which this court found fully equipped to hear the case.

The applicant decided to apply to this court to review those orders. On 8th July 2014 the applicant argued his case and told the court that the orders of the court have infringed on his rights. He also told the court he chose to come to the High Court because it had power to grant the orders he is seeking. Counsel for the respondents in Civil Case No. 1 of 2011 did not submit, choosing to leave matters with the court.

I have read the three files again. I note that the papers are mixed up and the applicant seems not to know what he is seeking. While I find Civil Case No. 1 of 2011 claims damages out of alleged defamation, Misc. Criminal Applications No. 6 of 2011 and 7 of 2012 are mixed up with papers in respect of the civil suit in file No. 1 of 2011. The applicant has not advanced convincing grounds why Criminal Case No. 24 of 2012 should be transferred. There are no proceedings attached to this application and this court is not aware whether that case has been concluded or not. While this court cannot close its doors to a litigant who comes before it seeking justice, I find Misc. Criminal Applications No. 6 of 2011 and 7 of 2012 frivolous and vexatious. They are an abuse of this court's process. They seek similar orders and there are no grounds advanced as to why the applicant thinks he deserves those orders.

In the circumstances, the orders made by this court on 4th July 2012 are hereby reviewed. The same are vacated and in their place this court hereby dismisses Miscellaneous Criminal Applications No. 6 of 2011 and No. 7 of 2012. If Criminal Case No. 24 of 2012 still exists and has not been finalized, it shall continue being handled by the magistrate at Hola until the same is finalized.

In respect of Garissa High Court Civil Case No. 1 of 2011 the applicant can proceed to take a date in September 2014 for directions as to the way forward. Each party will take care of its own costs in this application. It is so ordered.

Dated, signed and delivered this 24th July 2014.

S.N.MUTUKU

JUDGE