



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Miscellaneous Civil Application 459 of 2012

SAMUEL N. MWASHUMBE APPLICANT

AND

THE ATTORNEY GENERAL 1ST RESPONDENT

THE INSPECTOR GENERAL OF POLICE 2ND RESPONDENT

THE OCPD-MAKINDU 3RD RESPONDENT

THE DCIO MAKINDU 4TH RESPONDENT

THE OFFICER IN CHARGE OF TRAFFIC..... 5TH RESPONDENT

RULING

1. The applicant in the Chamber Summons dated 31st December 2012, seeks orders that leave be granted to commence proceedings of judicial review seeking orders of certiorari and prohibition directed towards the respondents to remove and quash the decision of the 3rd and 4th respondents to retain the applicant's National Identity Card and Employment Security Pass and compelling them to release the said documents.
2. The applicant's case is that he was arrested on 28th December 2012 for a traffic offence, charged and convicted at the Makindu Law Courts. He was fined Ksh.2,000/00 which he paid. He complains that his National Identity Card and Security Pass for were retained without reasonable grounds.
3. I directed that the OCPD, Makindu to show cause why the documents should not be released and a replying affidavit was duly filed on his behalf. Mr Joseph Ominja deponed that there was reasonable suspicion that applicant was not the person he states he is and the documents were retained to carry out further investigations. Indeed a letter dated 3rd January 2012 from the Office of the President states that the applicant is not in the employee database and that there is no designation of Senior Principal Administrative Secretary as claimed by the applicant. The respondents' position is that based on this evidence there was reasonable evidence to hold the documents for further investigation.

4. The application before me is an application for leave to commence judicial review proceedings. I have to be satisfied that there is an arguable case to be put forward once leave is granted.

5. The power of the police to investigate offences including the power to impound documents is clearly set out in the *National Police Service Act (No 11A of 2011)* and it is exercised upon reasonable suspicion of an offence having been committed. In my view, there is reasonable suspicion established for the respondents to exercise their authority to retain the applicant's documents for further investigations. In the circumstances there is nothing further to be litigated on the point as judicial review is concerned with the process and not substantive merits of whether or not the applicant is innocent of the accusation made against him. That is the work of other institutions the Police, the Director of Public Prosecutions and ultimately the Court, if there is sufficient evidence to mount a prosecution.

6. The application for leave to commence judicial review proceedings is rejected and the Chamber Summons dated 31st December 2012 is dismissed with no order as to costs.

DATED and **DELIVERED** at **NAIROBI** this 11th day of January 2013.

D.S. MAJANJA
JUDGE

Mr Kamunda instructed by Kamunda Njue and Company Advocates for the applicants.

Mr Tuti, State Counsel, instructed by the State Law Office for the respondents.