



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. 413 OF 2013

BETWEEN

JOHN WAIRA KARUGAPETITIONER

AND

DIRECTOR OF PUBLIC PROSECUTION1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

SOLOMON NJOROGE KIORE.....3RD RESPONDENT

AND

SAMUEL G. MACHARIA 1ST INTERESTED PARTY

JULIUS G. IKUA 2ND INTERESTED PARTY

RULING

1. The petitioner has been charged at the Makadara Chief Magistrates **Court Criminal Case No. 3032 of 2013**. He seeks conservatory orders stopping the trial pending the hearing and determination of the petition.
2. According to the charge sheet, the petitioner has been charged with the offence of forcible detainer contrary to **section 91** of the *Penal Code (Chapter 63 of the Laws of Kenya)*. The particulars of the charge are as follows;

JOHN WAIRA KARUGA; On or before 12th day of May 2011 at Roysambu area in Nairobi County being in possession of land reference number 1012/47/2 of Solomon Njoroge Kiore without colour of right jointly with others before court held possession of the said land in a manner likely to cause a breach of peace against the said SOLOMON NJOROGE KIORE who was entitled by law to the possession of the said land.

3. The petitioner's complaint is that he is a tenant of the interested parties at premises LR 1012/47 known as Wisdom Pub, Roysambu. He states that he had a dispute between himself and the landlords which culminated in a suit at the Business Premises Rent Tribunal being **Tribunal Case No. 845 of 2010**. The case was subsequently settled by a consent order recorded on 21st June 2012. He contends that the matter before the court is essentially a civil matter concerning the suit that has already been settled and is an attempt to coerce him to settle a civil debt that has already been settled. He claims that his rights will be violated by the criminal case proceeding.
4. The petitioner also claims that the complainant is a stranger to him and he has never dealt with him since the interested parties are the one who granted him the lease to the premises.
5. The respondent opposes the application for conservatory orders on the ground that the court trying the matter is competent and that there is nothing to show that the trial court will be unfair or will be unable to deal with the issues raised by the petitioner.
6. I have considered the matter and the arguments of the parties and it is apparent that the facts in the charge predate the consent order executed between the landlord and tenant in court on 21st June 2012. Although the charge is one related to a breach of the peace of a third party, it is clear that the forcible detainer or entitlement to possession is in respect of the premises which were subject to the consent order.
7. In the circumstances, I issue a conservatory order for a period of 30 days to enable the petitioner prosecute the petition to establish the breach of his rights on the following terms;
 - i. The proceedings of **Makadara Criminal Case No. 3052 of 2013, Republic v John Walia Karugu** are stayed for 30 days only.
 - ii. Costs in the petition.

DATED and DELIVERED at NAIROBI this 22nd day of August 2013.

D.S. MAJANJA

JUDGE

Mr Karigi instructed by Waiganjo Wachira and Company Advocates for the petitioner.

Ms Mwangi, Litigation Counsel, instructed by the Directorate of Public Prosecutions.