



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. 276 OF 2013

BETWEEN

NEWTON MUNGALA
PETITIONER

AND

THE INSPECTOR-GENERAL OF POLICE ...
.....1ST RESPONDENT

THE DIRECTOR OF CRIMINAL INVESTIGATION DEPARTMENT
..... 2ND RESPONDENT

DAVID RINGERA
3RD RESPONDENT

DIRECTOR OF PUBLIC
PROSECUTION 4TH RESPONDENT

THE HON. ATTORNEY GENERAL
..... 5TH RESPONDENT

JUDGMENT

This matter has been brought by the petitioner, an advocate, who complains that he is being harassed by the police for acting on behalf of his client's in a land transaction.

Both parties concede that the advocate has recorded a statement in the matter and that the matter is still under investigation. Further, no firm decision has been taken to prefer charges against the petitioner.

Having heard the counsels for the parties, what is apparent is that the petitioner's complaint essentially is about harassment. It is to be recognised that the police have the duty to investigate allegations of crime in a manner that respects the dignity of the person and is consistent with the values of the Constitution. The fact of one being an advocate, on the other hand, does not confer legal immunity from the criminal process.

In the circumstances, the order that commends itself to this court and with the consent of the parties is as follows;

1. The 1st, 2nd, 3rd and 4th respondents are restrained from demanding from the petitioner (advocate) that he produces, JEFF KIRIGA GICHARU (the vendor) to the investigative arm of government.
2. There shall be no order as to costs.

DATED and DELIVERED at NAIROBI this 26th day of September 2013

D.S. MAJANJA

JUDGE

Mr Kabaka instructed by Kabaka and Associates Advocates for the petitioner.

Mr Ng'etich, Litigation Counsel, instructed by the Office of the Director of Public Prosecutions.

Mr Moimbo, Litigation Counsel, instructed by the State Law Office for the 5th respondent.