

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CONSTITUTIONAL PETITION NO. 92 OF 2012

ANZIYA AKULA LABAN APPLICANT

V E R S U S

THE HON. ATTORNEY GENERAL 1ST RESPONDENT

THE OCS KAKAMEGA 2ND RESPONDENT

INSPECTOR JOSEPH MACHARIA 3RD RESPONDENT

R U L I N G

The petitioner is seeking an order of prohibition against the respondent from arresting or prosecuting the petitioner. The petition is supported by an affidavit sworn on the 2.7.2012. Counsel for the petitioner filed written submissions while the State left the matter to the court to decide. The essence of the petition is that the petitioner is an Advocate and represented one **ALICE NJERI MBUGUA** in Kakamega CMCC No. 81 of 2005. The plaintiff in that suit was awarded damages amounting to KShs.350,000/= less 10% contribution. The petitioner paid the plaintiff KShs.186,000/= and the plaintiff lodged a complaint with the Advocates Complaints Commission that was registered as No. 35 of 2011.

The petitioner contends that the Complaints Commission has not finalized the matter and the said Alice Njeri Mbugua is using a relative who is a police officer to have the petitioner arrested and charged in court. The dispute arises from a civil matter. It is clear that there is a dispute between an Advocate and his client and the only way to sort it out is to have the Advocate file his Bill of costs and have it taxed. Thereafter, the balance, if any, should be paid to the claimant. Arresting and charging the advocate in court will not settle the dispute. The claimant should either await the decision of the Complaints Commission or call upon the petitioner to tax his bill and know how much is the remaining balance. I do find that the application is merited and the same is allowed. Each party to meet his/her own costs.

Dated at Kakamega this 14th day of November 2013

SAID CHITEMBWE

J U D G E