



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW NO.24 OF 2011

**IN THE MATTER OF AN APPLICATION BY REV. WILLIAM CHARLES FRYDA (SUBJECT)
FOR JUDICIAL REVIEW RELIEF IN THE NATURE OF AN ORDER OF PROHIBITION
UNDER SECTIONS. 8 AND 9 OF THE LAW REFORM ACT AND ORDER 53 OF THE CIVIL
PROCEDURE RULES 2010**

AND

**IN THE MATTER OF HARASSMENT OF THE SUBJECT BY THE KENYA POLICE OVER
MATTERS ALREADY PENDING IN THE HIGH COURT IN NAKURU HCCCC NO.224 OF
2010 AND NAIROBI HCCC NO.9 OF 2011**

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE COMMISSIONER OF POLICE.....RESPONDENT

AND

ASSUMPTION SISTERS OF NAIROBI,

REGISTERED TRUSTEES.....1ST INTERESTED PARTY

ST. MARY'S MISSION HOSPITAL.....2ND INTERESTED PARTY

EX PARTE

REV. DR. WILLIAM CHARLES FRYDA.....SUBJECT

RULING

Pursuant to leave obtained on 7th March, 2011, the applicant, Rev. Dr. William Charles Fryda, has now brought a motion for orders of prohibition to restrain the Commissioner of Police (the respondent), Assumption Sisters of Nairobi, Registered Trustees and St. Mary's Mission Hospital (the 1st and 2nd

Interested Parties) from:

“.....harassing, arresting, confining, questioning, intimidating, or in any other manner exasperating the subject (ex-parte applicant) in relation to matters that are already pending before the court.....”

The applicant, an American Catholic missionary and a medical doctor, has averred that he has a dispute with the interested parties involving parcels of land, L.R. No.27228 (Nairobi), 18590/11 (Nairobi), 9361/10 (Nakuru) and Kiine/Rukanga/2846 (Sagana). The dispute is in court, being Nakuru HCCC No.224/2010 and Nairobi HCCC No.9 of 2011. The applicant contends that despite these two suits, the interested parties are using the police officers to harass him by keeping him at the police station for a whole day on 7th and 8th February, 2011, consistently calling him for questioning and searching his premises; that these actions by the police have always related to the properties the subject matter of the dispute in court; that one Cpl. Catherine Kofa has obtained an investigation warrant in Nairobi C.M. Criminal Misc. Application No.226 of 2011 to search the bank details concerning one of the properties in question, without involving the applicant; that these actions by the police constitute an abuse of the court process and police powers and privileges.

The interested parties as well as the respondent were duly served and counsel appeared in court for the respondent and sought time to file papers, but none was filed hence the hearing proceeded *ex parte*.

The applicant's position is that the interested parties are using the police in a matter that is already in a civil court. He has given instances where he has been summoned by the police and with his advocate kept waiting the whole day; that the matters he was being interrogated on relate to the matters in court; that the warrant to investigate the bank account also relates to the property in question. These averments have not been contradicted or rebutted.

An order of prohibition will issue to forbid an inferior tribunal or body from continuing with proceedings or acts in excess of its jurisdiction or in contravention of the laws of the land. It lies also for a departure from the rules of natural justice.

Both the **Constitution** and the **Police Act** make provision for the powers and functions of the police. For instance under **Article 245(4)** of the **Constitution**, the police service, in the performance of its powers to investigate any offence or to enforce any law against a person, is not subject to direction from any person. The functions of the police service under **section 14(1)** of the **Police Act** include the preservation of peace, the maintenance of law and order, the protection of life and property, the prevention and detection of crime, the apprehension of offenders and the enforcement of laws.

The respondent having duly been served with this application ought to have explained the action complained of by the applicant and to justify them in accordance with the laws outlined in the above paragraph.

It has been stated without being contradicted that the investigations by the respondent related to matters already in court. That being so, the respondent, although empowered to investigate crimes, has failed to indicate what crime was being investigated. Those investigations exposed the applicant to double jeopardy as the same issues were the subject of civil litigation.

For these reasons, I find that the actions of the respondent amounted to harassment and went beyond the respondent's powers. The interested parties are said to have influenced these investigations. They have not denied these allegations. For the reasons stated, the respondent is hereby restrained by an order of prohibition in terms of paragraph 1 of the motion.

The respondent and the interested parties to pay the costs of this application.

Dated, Signed and Delivered at Nakuru this 17th day of February, 2012.

W. OUKO
JUDGE