



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
MISCELLANEOUS APPLICATION 54 OF 2012

JOTHAM KILIMO

CHEA.....APPLICANT

-VERSUS-

SENIOR PRINCIPAL MAGISTRATES' COURT, MSA (*Sitting as the Anti-corruption court*).....RESPONDENT

-AND-

**THE ETHICS AND ANTI-CORRUPTION
COMMISSION.....INTERESTED PARTY**

RULING

The applicant **Jotham Kilimo Chea** has come before this court by way of chamber summons dated 8th June 2012. He seeks three prayers. He seeks leave to file an application for an order of prohibition directed at the 1st respondent sitting as an Anti-Corruption Court prohibiting the said court from either taking plea or proceeding to hear or entertain for determination charges leveled against Kilimo in Anti-Corruption Case No. 5 of 2012. In the second prayer he seeks leave to file for orders of prohibition to prohibit the 1st respondent from issuing warrants of arrest against him in regard to the Anti-Corruption case No. 5 of 2012. The third prayer, he seeks that the leave when granted do operate as stay of proceedings in the Anti-Corruption case No. 5 of 2012. The applicant is a civil servant employed in the ministry of lands. He has stated that he learnt through third parties that there was a case before the Anti-Corruption case where he was likely to be arrested and charged. He referred to newspaper reporting of that case, where he was named as one of the accused persons. In his statement of facts he stated:

“The applicant was upto that moment unaware of any investigations having been carried out by any person against him in connection with the newspaper report, and the information he had received from his workmates. The EACC (The interested party) personnel had upto that time not informed him (the applicant) of anything concerning the impending arrest and/or prosecution of him.”

The prayers of the Chamber Summons are directed at the warrants of arrest that were issued by the Anti-Corruption Court on 23rd May, 2011. They are also directed to what the applicant states is failure of the interested party to inform him of the details relating to the charges before the Anti-Corruption court.

The applicant was served through his counsel by the interested party with summons to appear for plea in the Anti-corruption court on 30th July 2012. The Anti-Corruption court on 23rd May 2012 was informed by the prosecution that the applicant amongst other co-accused had not been served with the summons to appear before the court. The court on that day issued a warrant of arrest against the applicant. When the matter again appeared before the Anti-corruption court on 4th June, 2012, the court on being addressed on the issue of the warrant of arrest made an order that the warrant of arrest was properly issued and would remain in force.

I have considered the application and I have also considered the opposition raised by counsel representing the interested party. The matters relating to prayer (b) in the chamber summons were matters that were addressed by the court in its judgment delivered on 13th June, 2012 in the case brought by Kilimo that is High Court MSA Constitution Petition No. 54 of 2012. To allow leave to be granted as sought in that prayer would be to allow the applicant to re-litigate the same issue. He therefore cannot be allowed.

In respect of the other prayers in the chamber summons that is; prayer (c) it relates to the warrant of arrest issued by the Anti-corruption court on 23rd May 2012. That warrant of arrest is alleged to have been issued when the applicant had already been served with summons to appear before the court for plea, on 30th July, 2012. There is valid reason in my view to seek leave for judicial review orders to be made in respect of that order. It is for that reason that I grant the following orders:

- 1. Leave is hereby granted to the applicant to file for prohibition prohibiting the 1st respondent from issuing warrant of arrest against the applicant.***
- 2. Leave so granted, shall operate as stay of the warrant of arrest issued in Mombasa Anti-corruption Case No. 5 of 2012 against the applicant on 23rd May, 2012 and confirmed on 4th June, 2012. For the avoidance of doubt, the 1st respondent is not estopped from issuing fresh or subsequent warrants of arrest for any lawful reason against the applicant.***
- 3. The costs of the chamber summons dated 8th June, 2012 shall be in the cause***

DATED and DELIVERED at MOMBASA this 18th day of June, 2012.

Mary Kasango

JUDGE