



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI (MILIMANI LAW COURTS)**

**Miscellaneous Criminal Application 42 of 2011**

**MANINAL JAMNANDAS RAMJI**

**GOHIL.....APPLICANT**

**VERSUS**

**REPUBLIC.....RE  
SPONDENT**

**RULING**

1. What is before the court is the amended petition dated 20<sup>th</sup> April 2011, in which the petitioner Manilal Jamnandas Ramji Gohil, prays that:

**(i) *There be a declaration that the prosecution in Kibera Chief magistrate's court criminal case No. 2601 of 2009 is unconstitutional, discriminating, cruel, harsh and degrading;***

**(ii) *There be an order barring, preventing, restraining and/or prohibiting the Respondents from continuing with the prosecution against the petitioner vide the Kibera Chief magistrate's court case No. 2601 of 2009.***

2. The backdrop of the case as set out in the amended petition, and as urged by Mr. Bosek, learned counsel for the applicant, is that the applicant was an employee of the interested party's family business, Jabiru Credit Traders Ltd, until May 2009 when the employee and employer fell out with each other.

3. That thereafter, the applicant has been subjected to all manner of abuses and degrading treatment by the police, under the instigation of the interested party. On a number of occasions the applicant has been physically assaulted, unlawfully subjected to personal search by the police, and his items confiscated by the police. Further that the petitioner has severally, been detained by the police without any cause or excuse.

4. That the police have shown outright bias and openly discriminated against the applicant, in favour of the interested party. That the police have refused and/or neglected to investigate the Petitioner's claim, and therefore the prosecution is un-constitutional

5. Learned counsel Mr. Bosek urged on behalf of the applicant, that the prosecution in **CM Cr. Case No. 2601 of 2009** at Kibera law courts, cannot be divorced from the general harassment that the police and the petitioner's former employer have subjected him to.

6. That for those reasons this court should be pleased to declare the trial discriminatory and oppressive

and issue an order barring the prosecution from going on with the said trial. That in the minimum the said case should not take off until the police investigates the applicant's complaints.

7. Learned state counsel, Miss Kihoro, opposed the application on behalf of the respondent. She relied on the affidavit of one Gilbert Kitaha sworn on 28<sup>th</sup> February 2011, and the preliminary objection to the application. She urged that a complaint was lodged to the police by the interested party, alleging that his former employee who is the applicant herein had made threats to kill him.

8. The police investigated and found that the applicant had made such threats. A witness called Raj Graham recorded a statement, subsequent to which the police charged the petitioner in **CM Cr. Case No. 2601 of 2009**. That the charges are therefore properly before the court, and that the police exercised their constitutional powers properly.

9. Thereafter the applicant went to the police and started making mere allegations. Miss Kihoro specifically referred to his letter dated 13<sup>th</sup> June 2009 where he said he was assaulted by the interested party, but the P3 the court was referred to did not disclose any injuries, and the submissions in court indicated that he was assaulted by the police. That his allegation therefore, had no truth in it.

10. The learned state counsel further submitted that the public notice in the papers was issued by his employer in the normal cause of business, yet the orders sought before this court are against the police. She submitted that the police acted in accordance with **Article 157 (6) of the Constitution 2010**, which grants the Deputy Public Prosecutor the right to institute proceedings, and did not in any way act maliciously.

11. I have anxiously considered the petition before me and the submissions of both counsels and I am not persuaded that there is legitimate reason to stop the trial in **CM Cri. Case No. 2061 of 2009** at Kibera law courts.

12. **Article 157 (6) of the Constitution 2010** confers upon the Director of Public Prosecution the mandate to exercise state powers of prosecution, which include to institute and undertake criminal proceedings against any person before any court (other than the court martial) in respect of any offence alleged to have been committed.

13. The police did receive a complaint whose investigation culminated in the instituting of charges in **CM Cri. Case No. 2061 of 2009**, against the appellant. If indeed the complainant or the police have committed other acts which may amount to criminal acts, those should be investigated separately as they may give rise to separate charges against different persons.

14. The sooner the applicant presents himself before the court in **CM Cri. Case No. 2061 of 2009** Kibera law courts, the sooner he will get a chance to demonstrate to the court the malice with which he thinks the prosecution is tinged. His case is before a court of competent jurisdiction which is capable of discerning whether the case is merely being used as a tool to discriminate and oppress the applicant who is an innocent person, or indeed he committed a crime for which he ought to be punished.

Reasons wherefore, I find that this application is lacking in merit and decline to grant it. The application is dismissed.

**SIGNED DATED and DELIVERED** in open court this 25<sup>th</sup> day of July 2012.

**L. A. ACHODE**

**JUDGE**