

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW 274 OF 2011

HASSAN ADEN OSMANAPPLICANT

VERSUS

THE COMMISSIONER OF POLICE.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL2ND RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS.....3RD RESPONDENT

RULING

In the application dated 22nd August 2011 the applicant seeks 2 orders namely;

- (a) An order of certiorari do issue to quash the decision of the 2nd respondent to charge him based on a complaint filed by NGO council.
- (b) An order of prohibition be granted directed to the Police Commissioner prohibiting him and any other police officer from harassing, intimidating, threatening with arrest, detaining in police cells preferring criminal charges, or prosecuting the applicant in respect of the complaint lodged by NGO council.
- (c) Leave be granted and the said leave to operate as a stay pending the hearing and determination of the intended filing and prosecution of the main Notice of Motion.

The basis of the application is that the entire criminal proceedings have been brought for ulterior purposes, that an independent investigation have cleared him of any blame of criminal liability. That the intended criminal trial is devoid of any public purpose and is an abuse of the power conferred upon by the respondent.

It is the case of the respondent that the application is full of falsehood, frivolous, misconceived, brought in bad faith and an open abuse of the court process, the application does not meet the requisite condition for the grant of the orders sought and lastly the matters complained of in the application form the defence of the applicant which should be raised before the trial court.

The issue for determination is whether to grant leave to the applicant to apply for judicial review and secondly whether the leave do operate as a stay of the decision of the 1st respondent to arrest the applicant and charge him before a court of law.

I have considered all the issues raised by the applicant and the respondent and it is clear in my mind that the present application was filed on 22nd August 2011. On 23rd August 2011, the applicant was granted some interim orders restraining the respondent from arresting him until this application is heard and determined by the court. I have also considered all the issues and grievances brought before court by the applicant and it is clear that there is a prima facie case which needs to be investigated and determined by this court. It is the case of the applicant that the entire criminal proceedings are intended for ulterior purposes and it is meant to ridicule, oppress and risk the reputation of the applicant. I think that those are serious issues which must be determined at the hearing of the main Motion. I am therefore satisfied that there is a prima facie case which needs an interim protection pending the filing and determination of the

main Motion. Consequently I grant leave and I order the said leave shall operate as stay. I direct the applicant to file the main Motion within the next 7 days. I also direct the applicant and the respondents to file their submissions within the next 7 days. Mention on 30th July 2012 for further directions and orders.

Dated signed and delivered at Nairobi this 20th day of July 2012.

M. WARSAME

JUDGE