



REPUBLIC OF KENYA

High Court at Kisumu

Constitutional Reference 10 of 2012

TIM JABALONG.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

RULING

The applicant's application dated 18-5-2012 prays for temporary orders to restrain the OCS, the OCPD Bondo from arresting him pending the hearing and determination of the petition. The same is supported by his own affidavit sworn in 18-5-2012.

The respondent chose not to file any response but the learned state counsel argued several legal principles. The applicant contends that the police officers on two occasions have gone to his home in search of him on a suspicion that he owns a firearm.

He further states that they have threatened that they shall shoot him as soon as he is spotted.

I have perused the entire application. On the face of it there is a genuine grievance on the part of the applicant. What I am unable at this juncture to tell is whether indeed such threats to shoot and kill was issued by the police. If this is so then it is a grave matter. This nonetheless is left for the substantive hearing.

Section 29 of the criminal Procedure Code chapter 75 laws of Kenya nonetheless grants the police the enabling authority to carry searches and arrests with or without warrants. These powers should not however be done arbitrarily and without taking into consideration the welfare and the rights of such a suspect.

However the suspect equally cannot stop the police who have been mandated by the constitution and other relevant laws to carry out protective rights of the citizenry.

In the premises and pending the hearing of the petition, I shall make the following orders:-

- (1) The applicant shall present himself to the Bondo OCPD or OCS within the next 7 days from the date herein.**
- (2) The present bond granted to the applicant earlier on of Kshs. 500,000/= shall expire after 7 days from the ruling herein and for avoidance of doubt after the applicant shall have presented himself to the said police officers.**

I make no further orders as the same shall amount to gagging the legitimate powers of the police outlined above. Costs shall abide the substantive petition.

Dated, signed and delivered at Kisumu this 29th day of October 2012.

**H.K. CHEMITEI
JUDGE**

In the presence of:

No appearance for the petitioner

No appearance for the respondent

HKC/va