



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 124 OF 2010

COLIN STUART.....PETITIONER

VERSUS

- 1. THE COMMISSIONER OF POLICE**
- 2. THE DIRECTOR, CRIMINAL INVESTIGATIONS**
- 3. SALLY MULLENS**
- 4. STEVE MULLENS**
- 5. ALBERTO SOPRANI**
- 6. WASINI ISLAND LIMITED**
- 7. ERICK MWAWIRA**
- 8. SALLY IBERE**

DEPT.

9. THE ATTORNEY GENERALRESPONDENTS

R U L I N G

This is an application by the 3rd, 4th, 5th and 6th Defendants for an Order to strike or dismiss the Petition Dated 8th November 2010 as against the Defendants. It is supported by an affidavit sworn by the Third Defendant on behalf of herself and the other three Respondents.

The Petitioner filed a Replying Affidavit sworn on 17.02.2011.

Counsel agreed to dispose of the application by written submissions. The Applicants duly filed their written submissions as ordered. However, the Petitioner failed to file his written submissions.

I have carefully considered the application and the affidavits on record. I have also considered the submissions made by the Applicants. I do find that:-

- From the alleged facts arising the Petitioner's rights in respect of his fundamental freedom under the Constitution of Kenya can only have been denied violently, or infringed or threatened if such acts were carried out by the State.

- It is the responsibility of the State to ensure that these are properly carried out.

- The only allegation made in the Petition by the Petitioner in his affidavit is in regard to civil disputes between the Petitioner and the 6th Respondent.

- The Petition has been brought against the Applicants as parties based only on allegations of a civil dispute.

- The allegation of a fair trial can only be against the Attorney General as a Prosecutor or possibly a court of law.

I do find that the Petition discloses no reasonable course of action as against the Applicants. It is an abuse of the process of the court. This is particularly so on the ground that the Petitioner filed judicial review proceedings which are still pending before this court and in which orders were granted staying Chief Magistrate's Criminal Case No. 303 of 2010.

I therefore do hereby dismiss the petition as against the 3rd, 4th, 5th and 6th Defendants with costs.

As a logical consequence and *suo motu*, I do hereby strike out the Petition against the other individual Defendants namely, the 7th and 8th Defendants with no order as to costs.

Dated and delivered at Mombasa this 5th day of May 2011.

M. K. IBRAHIM

J U D G E

Coram:

Ibrahim, J

Court clerk – Kazungu

Ms. Oluoch for the applicants

No appearance for the Petitioner

Mr. Kamau for the Respondents (1st, 2nd and 9th)

Ruling delivered in their presence.

Ibrahim, J