



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Judicial Review 56 of 2009**

THOMAS KORINYANG OPETO..... APPLICANT

Versus

THE HON. ATTORNEY GENERAL- 1ST RESPONDENT

THE COMMISSIONER OF POLICE..... - 2NDRESPONDENT

**THE DIRECTOR OF KENYA ANTI
CORRUPTION COMMISSION - 3RD RESPONDENT**

THE CHIEF MAGISTRATE - 4TH RESPONDENT

RULING

Pursuant to the provisions of s. 8(2) of the Law Reform Act and Order L111 rules 1, 2 and 3 of the Civil Procedure Rules, Thomas Korinyang Opeto, the exparte applicant herein, took out the summons dated 24/11/2009 in which he applied for the following orders:

1. *That this honorable court be pleased to grant leave to the applicant to file for orders of Prohibition directed against the 1st, 2nd and 3rd Respondents, their servants and/or agents or any other persons acting under their authority Prohibiting them from conducting, prosecuting or in any other manner proceeding with the conduct of Criminal Case No. 15 of 2009 pending the full hearing and determination of the instant matter.*
2. *That the honourable court be pleased to grant leave for an Order of Prohibition directed to the 4th Respondent prohibiting the 4th Respondent or any other Judicial Officer acting on the behest or authority of the 4th Respondent from conducting any further proceedings in Criminal Case No. 15 of 2009 before chief Magistrate Nyeri pending the full hearing and determination of this matter.*
3. *That the honourable court be pleased to grant leave for an order of prohibition directed to the 3rd Respondent herein or any other officer acting on the authority or behest of the 3rd Respondent prohibiting him any one of them from interrogating, harassing or in any other way intimidating the subject, from any matters relating or pending in Criminal Case No. 15 of 2009 pursuant to the complaint by MICHAEL NDAMBIRI.*
4. *that this honourable court be pleased to grant leave to the applicant to file for orders of prohibition directed to the 2nd respondent herein prohibiting the 2nd respondent by himself, servant and/or agents or any other officer acting under the authority on behest of the 4th Respondent from taking any adverse action in respect of the subjects terms of service and employment for any reason based on the subject matter herein pending the full hearing and determination of the matter.*
5. *That this honourable court be pleased to grant leave to the applicant to file for order of certiorari directed to the 2nd and 3rd respondents herein to bring before this court for the purposes of being quashed their decision to charge and prosecute the applicant vide criminal case No. 15 of 2009 pursuant for allegations by one MICHAEL NDAMBIRI*

The Hon. Attorney General, the commissioner of Police, The Director of Kenya Anti Corruption Commission and the Chief Magistrate, Nyeri were named as the 1st, 2nd 3rd and 4th Respondents respectively. The summons is accompanied by a statement of facts and is verified by the affidavit of Nicholas Odhiambo Omanyoo sworn on 24th November 2009.

The application is *ex parte* in nature. In order for the court to grant leave there must be *prima facie* evidence of an arguable case. At this stage the court is not required to go in depth of the matter. It is the submission of Mr. Wandugi, learned advocate for the *ex parte* applicant that the orders sought in the summons should be given on the basis of the material presented to this court. It is stated the intended prosecution of the *ex parte* applicant by the Respondents is in bad faith and actuated by malice. I find this to be an arguable point. It is also alleged that the prosecution is oppressive, capricious and hence wholly without merit. Again I find that the *ex parte* applicant has shown a *prima facie* arguable case. Consequently the applicant is granted the orders sought in the summons. The applicant should file the substantive application within 21 days from the date hereof.

Dated and delivered this 13th day of January 2010.

J.K. SERGON
JUDGE

In open court in the absence of counsels.

J.K. SERGON
JUDGE