



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL APPLICATION NO. 16 OF 2010

IN THE MATTER OF SECTION 84(1) OF THE CONSTITUTION OF KENYA

AND

**IN THE MATTER OF ALLEGED CONTAVENTION OF FUNDAMENTAL RIGHTS &
FREEDOMS**

UNDER S.72(3) (B) OF THE CONSTITUTION OF KENYA

BETWEEN

LAWRENCE MUTUGI KIRIMI.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Petitioner is charged before Meru Chief Magistrate's Criminal Case No. 892 of 2009 which, the time of filing of this Petition was ongoing. The charge is not annexed so the Court cannot tell which charges he faces. However in this submissions before the court he stated that the case had been concluded and he had been jailed.

In the Chamber Summons filed herein, the Petitioner seeks;

- 1. That the court be pleased to stay the proceedings in Meru CRC No.892/09 pending the hearing and determination of the petition herein.**
- 2. That court do make any other orders for ends of justice.**

The application if perused on the following grounds;

- (a) The petitioner has lodged petition herein to nullify the charges in Meru CRC No.892/09 and**

the proceedings thereof.

(b) The matter is already fixed for hearing on the 21.6.2010

(c) That my petition has high chances of success

(d) That the lower court has refused to refer the matter to the high court despite my raising a constitutional issue

(e) It is only fair the same be stayed to that the Applicant is not prejudiced should lower court insist to proceed with the hearing.

The final prayers sought in the petition are three as follows;

1. That the charge and proceedings in Meru CRC No.892/09 to be declared a nullity.

2. That the petitioner be compensated for the violation of his fundamental rights as the court deems fit.

3. That costs be provided for.

Mr. Musau for the state stated that from submissions by the Petitioner it appeared the Petition had been overtaken by events. The learned counsel submitted that the prayers sought in the Petition were to stay the proceedings in the lower court. Counsel inferred that since the matter had been concluded the Petition ought not to be entertained.

I have considered submissions by the Petitioner and the learned state counsel.

The Petition seeks not only to stay proceedings of the lower court but also compensation for violation of Constitutional Rights and for costs.

As learned counsel rightly observed, the prayer to stay the cm's court proceedings has been overtaken by events since the matter was concluded and judgment passed.

In regard to prayer for compensation, the Application has been brought under S72(3) (b) of the Old Constitution. In order to get compensation, the Applicant ought to have filed a suit against the state in the normal way where particulars will be pleaded and evidence called. That prayer cannot be entertained in this Application.

The result is that the Applicant's Application fails in total and is dismissed.

Dated at Meru this 3rd day of December 2010.

LESIIIT

JUDGE

3RD December 2010

Coram:

Lesiit J.....Judge

Kirimi/Mwonjaru.....Court Clerk

Mr. KirimaFor Applicant

Mr. MusauFor Respondent/State

Ruling was read, signed and delivered in open court this 3rd December 2010.

LESIT

JUDGE