



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Misc Petition 212 of 2006

IN THE MATTER OF SECTION 84(1)

IN THE MATTERS OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER SECTIONS 70, 72 AND 75 OF THE CONSTITUTION

BETWEEN

1. KIPOKI OREU TASUR..... PETITIONER

VERSUS

2. THE HON. ATTORNEY GENERAL..... RESPONDENTS

RULING

Before me is a Chamber Summons dated 14th November, 2008 filed by E.K. Mutua & Company advocates on behalf of the petitioner/applicant. The Chamber Summons was filed following the filing of a *PETITION*, which was filed on 27th April, 2006. The Chamber Summons was filed under rule 20 and 21 of the *Constitution of Kenya (Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual) High Court Practice and Procedure Rules, 2006*. The substantive orders sought in this Chamber Summons application is prayer 2 as follows-

THAT a conservatory order be issued to prevent the Respondent from arresting or prosecuting the Petitioner herein in relation to Land Parcel L.R. No. Transmara/Shartuka/920 and 1620, pending the hearing and determination of the Petition herein.

The application was filed with a supporting affidavit sworn by the applicant on 14th November, 2008. What was deponed in the said affidavit was that the applicant was informed by his wife on 11th November, 2008 that he was required to report to the CID at Kilgoris Police Station, and he went to the said police station on the same date, and was informed that he had to record a statement in connection with L.R. No. Transmara/Shartuka/920 and 1620, while he had already recorded a statement on same in June, 2005.

Though the application was served on the Attorney-General on 21st November, 2008, he neither entered appearance or appeared in court on the hearing date, which was 28th November, 2008. At the hearing, Mr. Mutua for the applicant addressed me.

Under rule 20 of the *Constitution of Kenya (Supervisory Jurisdiction and Protection of*

Fundamental Rights and Freedoms of the Individual) High Court Practice and Procedure Rules, 2006,
L.N. No. 6 of 2006, this court has jurisdiction to grant conservatory orders.

I observe that in the Petition, the applicant has asked for a declaration that the action to investigate and prosecute him amounts to harassment and infringes upon his rights to personal liberty. The Attorney-General has not bothered to file any papers in opposition to the application, though he was served. The application will succeed.

In the circumstances of this case, I will grant limited conservatory orders.

Consequently, I order as follows-

- 1. I grant conservatory orders to prevent the Respondents from arresting or prosecuting the petitioner herein in relation to Land Parcel L.R. No. Transmara/Shartuka/920 and 1620 up to 30th September, 2009, unless varied or extended by this court.***
- 2. The respondents are however at liberty to investigate and record statements from the petitioner.***

It is so ordered.

Dated and delivered at Nairobi this 4th day of March, 2009.

GEORGE DULU

JUDGE.

In the presence of-

Ms. Nthuku for applicant

Mr. Kirori for respondent