



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Judicial Review Appli. 18 of 2009

MAINA MBUTHIA GAKERE.....1ST APPLICANT/SUBJECT

KARUKI MUREITHI.....2ND APPLICANT/SUBJECT

JOSEPH CHEGE.....3RD APPLICANT/SUBJECT

VERSUS

THE ATTORNEY GENERAL.....RESPONDENT

AND

THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS.....INTERESTED PARTY

RULING

The ex-parte applicants have applied for leave to institute judicial review proceedings in the nature of an order of prohibition to have the respondents and interested party stopped from interfering with the applicants operations as tax experts or tax advisers. The applicants also wish to stop the respondent and the interested party from instituting further charges against them based on their operations as tax consultants. The applicants also pray that the leave granted do operate as a stay of institution of any further charges or their prosecution. This application is based on the grounds stated on the body of the application, the supporting affidavit by **Maina Mbuthia Gakere** sworn on 4th March 2009 and the statement of facts.

Briefly summarized, the applicants contend that they have been trained as accountants, and for a long time they have been involved in offering tax consultancy and advisory services. The applicants claim that they have never held themselves out as members of the Institute of Public Certified Accountants or as registered accountants. They have been operating under **Section 19(3) of the Accountants Act** and **Section 54 of the Income Tax Act**.

The applicants have been charged in Nakuru Chief Magistrate's Criminal Case No. 757, 759 and 760 where they have been charged with the offence of practicing accountancy without a practicing certificate from the Institute of Certified Public Accountants of Kenya. While those charges are pending, the

applicants complain that the respondent and the interested party intend to charge them with the same offences, they will be denied bail and while in custody their practices will be closed.

The applicants contend that the respondent is acting beyond their powers and mandate by using their position of authority to intimidate and harass the applicants. In the supporting affidavit the applicants have deposed that they have received calls from anonymous people who have issued them with threats that they would be re-arrested and put in custody. It is for these reasons that the applicants have sought for an order of prohibition and the said order to operate as a bar to any further prosecution.

The remedy of prohibition is a discretionary one, it can be granted on the basis of clear evidence of abuse of power. The abuse of power complained about here by the applicants is that the respondent and the interested party have threatened to re-arrest the applicants, deny them bail and charge them with fresh charges. This can be discerned from the averments under paragraph 6 and 7 of the supporting affidavit which states as follows:

“6. THAT the respondent and interested party are issuing threats that they will cause my re-arrest and oppose my bail application since according to them am further engaging in criminal acts.

7. THAT I have been receiving calls from anonymous people threatening me and making it known to me that I will be put in custody until the new case instituted against me is heard.”

Do those threats by an unnamed people and calls from anonymous callers constitute clear evidence of abuse of power by the respondent and interested party? There are no summonses by the Police or a letter written by the interested party threatening to take further action against the applicants. I am not satisfied that mere apprehension based on anonymous callers is sufficient basis for the court to entertain this kind of application. The matters complained about are speculative, in any event if the applicants are charged with same charges (*evidence of which they have not shown*) that is tantamount to double jeopardy and no court of law would countenance an abuse of process. Based on the above, I decline to grant the leave sought and the ex-parte application is hereby struck out for lacking in merit.

Ruling read and signed on 3rd day of April 2009

M. KOOME

JUDGE