



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
PROBATE & ADMINISTRATION 32 OF 2000

**IN THE MATTER OF: AN APPLICATION BY JOCHEN MICHAEL RINCK FOR A
RESTRAINING AND/OR ORDER FOR ESTOPPEL**

A N D

**IN THE MATTER OF: AN APPLICATION TO RESTRAIN AND/OR ESTOP THE
RESPONDENTS FROM INTENDED VIOLATION OF THE FUNDAMENTAL RIGHTS AND
FREEDOMS OF THE APPLICANT WITHOUT GIVING THE APPLICANT A CHANCE TO BE
HEARD BY DEPORTING HIM AGAIN AS THEY DID ON 26TH APRIL 2009**

A N D

**IN THE MATTER OF: AN APPLICATION UNDER AND PURSUANT TO SECTION 70, 74,
75, 82 AND 84 OF THE CONSTITUTION OF KENYA**

R U L I N G

By a Notice of Motion dated 19th May 2009 made under section 70,, 74, 75, 82 and 84 of the Constitution of Kenya, the applicant Jochen Michael Rinck, seeks for restraining orders against the Principal Immigration Officer, Mombasa and/or any of the respondents authorized agent from detaining and/or deporting the applicant who has suffered double jeopardy and deported unfairly without due process of the law, thereby violating his constitutional rights.

Further, that applicant be allowed to access his properties i.e a house and two motor vehicles that he left behind.

It is premised on grounds that:-

- (1) The applicant is a German citizen currently holding a single journey visa No. 652015.
- (2) He came into Kenya by virtue of entry permit class K, No. 336210 issued on 25-1-05 and stayed for two years.

- (3) Within that period, the applicant acquired several properties
- (4) The applicant differed with his girlfriend who instigated his arrest and deportation between 24th and 25th April 2007, when he was arrested and bundled in a plane to Germany.
- (5) At the time of deportation, the applicant was never given any explanation for his deportation.
- (6) His properties are being wasted by third parties, to his detriment.
- (7) The immigration authorities have expressed their intention to have him deported despite having a valid entry visa.

So applicant now seeks the court's protection and in the affidavit supporting the application, it is deposed that he first came to Kenya in 2001, got attracted by the country's beauty and developed an interest in owning a home here. So he bought plots No. CR 36441 and 36443 and constructed a house thereon – copies of the Title Deeds are annexed and marked JMR2. He also bought motor vehicle registration No. KAV 561W Toyota Spacio and KAE 357T Mitsubishi Pajero. Sometime in November 2006, he was arrested and arraigned in court, and charged with the offence of assault of a minor in Kilifi Court. He was convicted and fined Ksh. 60,000/- which he paid on 21-3-07. After the conviction, he was called by an immigration officer named Omooria, in Mombasa. Upon getting there, he was detained and deported with no reasons being given – a copy of the ticket which was used to deport him is annexed and marked JMR3.

Meanwhile, during his sojourn in Kenya, he had befriended a Kenyan, Milka Wangui Kabue and differences arose between them and she swore to get him deported without even a shoe – so he believes she had a hand in his deportation so that she could deprive him of his property.

He left the two motor vehicles at his residence in Mtwapa and on the day he was summoned to the Immigration offices, he had driven one of the motor vehicle Toyota Spacio Registration No. KAV 561W and the immigration Officer ordered him to surrender the car keys – which he did. So to date, he does not know the status of his motor vehicle or the other property. He states that his deportation was fast tracked to the extent that he did not have a chance to challenge not only the criminal conviction, but even his deportation.

The applicant, after obtaining a visa to return to Kenya, took caution and instructed his local Counsel, Mr. Ghalia, to speak to Immigration Authorities in Mombasa – as per annexure JMR5 (an e-mail letter) and was advised that he would be deported the moment he landed in Kenya, so he is apprehensive that the Immigration Personnel may soon deport him again.

Although the application was served on the Attorney General, no response was filed. At the hearing of the application, Mr. Naulikha appeared on behalf of the Attorney General, and it was only after the applicant's counsel, Mrs. Ogoti had completed her submission that he indicated he was holding brief for Mr. Njoroge, who had asked him to request to be served with unspecified documents. It was apparent that Mr. Naulikha had been given very sketchy instructions and the court noted as much – the upshot was that he could not competently argue the application. It was also clear that nothing had been prepared or filed in response to the application – which means it remains uncontroverted.

What was the reason for the applicant's deportation? Was it because he was convicted of slapping a

minor? Was it because a certain politician (as he alleges) had undertaken to ensure he was whisked out of the country, was it a scheme by his former girlfriend? Was it some personal vendetta by his former worker? Clearly from the provisions of section 3 (1) d of the Immigration Act, it was because of the conviction so he was deemed to be an undesirable person.

He says he has been assured of being deported from Kenya once again – of course there is no affidavit sworn by Mr. Ghalia to confirm that such a threat has been made. However applicant's fears are founded in past experience and indeed it is not denied that he was deported without any notice being served on him or any reason being advanced – what is there to stop the Mombasa Immigration officials from repeating the same thing? What will befall the applicant if this court were to rule that because there is no deportation order served on him yet, he is merely suffering from panic attack. The silence which met every correspondence he sent to Kenya's various authorities goes further to justify his apprehension that he may fall victim to another spiriting away from the country without being given a single reason. His fears are real, yet the legal provision is that if he has not received pardon, then he remains an undesirable immigrant.

The Constitution of Kenya section 84(1) recognizes the enforcement of protective provisions – applicant has alluded to his right to property, his freedom of movement being violated by the actions of the Immigration Officials, yet these rights are not absolute, they are to be considered in relation to the law in the country.

The applicant's copy of passport has not been stamped with a declaration that he is a prohibited immigrant however he has not attached a copy of that passport, he only annexed a copy of the visa. Section 3(1)d of the Immigration Act provides as follows:

“a person who, not having received a free pardon, has been convicted in any country, including Kenya, of murder or of any offence for which a sentence of imprisonment has been passed for any term and who, by reason of such conviction, is considered by the Minister to be an undesirable immigrant;

Section 4(1) of the same Act provides that:

“Subject to this section, no person who is not a citizen of Kenya shall enter Kenya unless he is in possession of a valid entry permit or a valid pass.”

Applicant has a valid entry permit.

I am persuaded that the actions of the Immigration Officials were guided by the provisions of section 3, (d) of Cap 172 that applicant having been convicted of an offence and sentenced to an imprisonment term (albeit as a default sentence) was considered an undesirable person – no wonder the Immigration officer remarked to him that the Minister had personally ordered for his arrest and deportation. But any way that is no water under the bridge – he was deported. He has obtained a valid permit into the country – thus meeting the requirement of section 4(1) of Cap 172 BUT he has not demonstrated that he has received FREE PARDON for the conviction and so he fails under section 3(1) d of Cap 172 and could perhaps only be doing so under section 3(3) of the Act. Subsequently I find no basis upon which to issue the orders sought and this application is therefore dismissed.

Delivered and dated this 15th day of July 2009 at Malindi.

H. A. Omondi

JUDGE

Mr. Ogoti for applicant

Mr. Naulikha for respondent