

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA
Criminal Miscellaneous Application 79 of 2009

IN THE MATTER OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE CRIMINAL PROCEDURE CODE CAP 75 LAWS OF KENYA

ALI ABDALLA MWANDEMBA APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

The Applicant herein has come before this court seeking inter alia the following orders:-

“2 THAT this Honourable court be pleased to order and direct that the Applicant herein be admitted to bond and/or bail pending arrest upon the Applicant executing personal bond and to attend before the Honourable court or other court whenever summoned to do so and/or further orders from the Honourable court”.

Mr. Onjoro for the Applicant argues in his submissions before me that the Applicant is apprehensive that following investigations by the police his right to liberty may be about to be violated. The police in this country are mandated to investigate any crime and are equally mandated to take appropriate action against persons whom they reasonably suspect of involvement in any offence. It would not bode well for this mandate if this court allowed itself to be used to muzzle the police. The Applicant indeed has a right to liberty but this is not an absolute right. There are certain lawful situations where one (including the Applicant) may be deprived of his liberty. In my view the Applicant’s apprehensions are misplaced. If indeed he is ever arrested and charged then he will be accorded due process and may secure his liberty through the courts. I am reluctant to interfere or to act in such a manner as to muzzle the police in performing their duties. As such I decline to grant the orders sought herein. I dismiss this present application in its entirety. Costs to be met by the Applicant.

Dated and delivered at Mombasa this 30th day of September 2009.

M. ODERO

JUDGE

Read in open court

No appearance by either party

M. ODERO

JUDGE

30.9.2009