



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**

**Miscellaneous Criminal Application 66 of 2009**

**JOEL KIPROTICH KIMULWA ..... APPLICANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**RULING**

Before me is an application by way of Notice of Motion brought by the Applicant under Section 39 and Section 123 of the Criminal Procedure Code Cap. 75 Laws of Kenya in which the Applicant seeks orders:-

- (a) That service be dispensed with in the first instance.
- (b) That the Honourable Court be pleased to arrest the Applicant/Subject now before the Court.
- (c) That this Honourable Court make such orders as it deems fit to protect the Subject/Applicant herein from imminent arrest and incarceration and threats of the prosecution.

In support of the application JOHN KIPROTICH KIMULWA has sworn an affidavit giving grounds. Briefly the facts which gave rise to this application as gathered from the affidavit evidence are as follows.

The Applicant is a member of the African Inland Church (A.I.C) and the Secretary of his local Church. On 11<sup>th</sup> day of October, 2009 they had a District Church Council (D.C.C) Sunday Service at the African Inland Church Tulwet Local Church; that while the sermon was on going, a group of about thirty (30) people stormed into the Church and disrupted their service; that in the melee that ensued scores of people including himself were injured; that reports were made to the police who arrived at the service and thereafter made arrests; that one Jackson Kipchirchir Yator who was part of the congregation just like himself was arrested on 12<sup>th</sup> October, 2009 and arraigned in Court on 13<sup>th</sup> October, 2009 charged with assault; that when he went to Kesses Police Station to make a report, he was threatened with arrest; that he was treated at Uasin Gishu District Hospital but when he went to the Police Station he was denied a P3 Form and was again threatened with arrest; that was reasonable apprehension that the threats of arrest and prosecution are real and that it is fair and just that Honourable Court deems fit to grant him the necessary protection against such threats.

The Applicant's application is brought under Section 39 and 123 of the Criminal Procedure Code. These sections are applicable under the assumption that cognizable offence has been committed.

The Court must satisfy itself that an offence has been committed before arrest. In the instant case the Applicant denies to have committed any offence and the Court therefore declines to arrest him. All that the Applicant is after is anticipatory protection but the Court cannot prevent the police from carrying out their investigations if they have reasonable suspicion that an offence has been committed. The Police ought to do their investigations and in case they come to the conclusion that an offence has been committed, the Applicant can be arrested and charged.

I order that in the event he is arrested and charged he should be released on police bond if the offence is bailable and to appear in Court on a date as directed by the Police.

Those are the orders of this Court.

**DATED AT ELDORET THIS 21<sup>ST</sup> DAY OF OCTOBER, 2009.**

**J. L. A. OSIEMO**

**JUDGE**