

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Misc.Crim. Appli 22 of 2008

JOSEPH NYAGA (MUTUGI)

ALIAS JOSEPH NYAGA

MUSA.....APPLICANT

VERSUS

REPUBLIC.....

RESPONDENT

RULING

Citizens can now enforce their rights entrenched in constitution Chapter 5 Section 70 – 83 inclusive as provided under Section 84 thereof. Rules of Practice are made by the Chief Justice. That is the constitution of Kenya (Supervisory jurisdiction and Protection of Fundamental Rights and Freedom of Individual 2006.

The court has supervisory Jurisdiction interpretative jurisdiction and enforcement jurisdiction. This is where when proceedings are before subordinate court and the court is of the opinion that a point of substantial question of law is involved that court may refer the question to the High Court or if the court is requested by a party to do so it shall refer the matter to the High Court Form for use under this Section are prescribed.

Part III is for enforcement of violations of the rights conferred under Section 70 to 83. Also here the forms in use are prescribed. The Section 72 falls under this part.

From the perusal of the proceedings here one can see that the applicant is complaining that Section 72 of the constitution was violated and continues to be violated in relation to him being prosecuted.

In my view such action as is proposed has no chances of succeeding. Now coming to the issue of delay, there is a certificate of delay issued by court which shows it was ready for collection on 22/4/2008 and this application was filed on 2/5/2008. Proceedings collected on 7/3/2008, there is delay of 2 months. In view of the fact that the proper procedure was not followed as stated above, I find the chances of appeal are no existent. Therefore I am inclined to reject the granting of leave to file such appeal and therefore the issue of stay of proceeding in the criminal case now on going in Kerugoya is not granted.

It is so ordered.

Dated this 12th May, 2008.

J. N. KHAMINWA

JUDGE