



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Misc. Appli. 284 of 2008

GEORGE KARANJA KARANGU..... APPLICANT

V E R S U S

THE COMMISSIONER OF POLICE

**THE HON. ATTORNEY
GENERAL.....RESPONDENTS**

R U L I N G

Before me is a Chamber Summons application filed by M/S Thuita Kiiru & Company advocates for the ex-parte applicant George Karanja Karangu. The application was brought under Order 53 rule 1 (2) of the Civil Procedure Rules, as well as the Law Reform Act (*Cap. 26*). The orders sought in the application are that-

1. This Honourable court be pleased to grant leave to the applicant George Karanja Karangu to apply for an order of prohibition to stop the Commissioner of Police from arresting, charging or detaining or instituting any criminal prosecution against the applicant herein arising out of a complaint to the police and or Criminal Investigation Department by one Mark Kabiru relating to the affairs of REAL CARS LTD.

2. The grant of leave so given do operate as a stay of the arrest, indictment, detention, criminal prosecution of the applicant or the institution of any criminal proceedings against the applicant arising out of a complaint by Mark Kabiru on affairs of REAL CARD LTD.

There are several grounds listed on the face of the Chamber Summons application. The application was also filed with a verifying affidavit and STATEMENT.

When the matter came up before me on 19/5/2008, I ordered that the respondents be served. After service, the Attorney-General filed a replying affidavit sworn on 4th June, 2008 by Corporal Geoffrey Macharia.

At the hearing of the application, Mr. Njenga appeared for the applicant and Mr. Mwangi appeared for the respondent.

Mr. Njenga submitted that the applicant was at one time a director of REAL CARS LTD, but resigned this year. An agreement had been executed in which, per article 6, the remaining director was to indemnify the applicant against any claims. In that regard the company transferred a vehicle to the

applicant and the applicant transferred his shareholding to the company. In view of the agreement, the matter cannot be said to be a criminal matter, or to have criminal implications. Therefore, the intended criminal case against the applicant is an abuse of the court process. Consequently, because there appears to be a decision to prosecute the applicant, the applicant was seeking for leave to file Judicial Review proceedings. If he was arraigned in court, it would be prejudicial to him as he would suffer inconvenience and incur expenses. Counsel sought to rely on the case of OTUOMA –VS- REPUBLIC and submitted that, in Judicial Review, once there was an issue to be canvassed, an applicant had to be given an opportunity to be heard irrespective of whether there were other avenues for remedy.

Mr. Mwangi for the respondent opposed the application. Counsel submitted that there was no justification for granting leave to file Judicial Review proceedings, especially for an order of prohibition. The request that there be stay orders was not justified. Counsel sought to rely on the replying affidavit sworn on 4/6/2008. Counsel submitted that the investigating officer had given reasons for the intended prosecution of the applicant. The alleged offences were committed before the applicant resigned from directorship of REAL CARS LTD. Counsel argued that the investigating officer wants to join the applicant with others who had already been charged. Counsel emphasized that Section 193(9) of the Criminal Procedure Code (*Cap. 75*) allowed civil and criminal proceedings on the same subject matter to proceed at the same time.

I have considered the application, documents filed and the submissions of Counsel for the parties. Indeed, under Section 193 (a) of the Criminal Procedure Code (**Cap 75**) criminal proceedings can be instituted and prosecuted, even if there are pending civil proceedings. However, each case has to be considered on its own merits. There is also need to ensure that State organs do not abuse their power by being used to settle purely civil or commercial matters through the criminal process. Otherwise, that could easily amount to abuse of power and abuse of the court process.

Though the appellant claims that the alleged offences relate to the period after he had resigned the directorship of the company, his own verifying affidavit sworn on 16th May, 2008, at paragraph 5 shows that he resigned his directorship on 18th April, 2008, while the charges cover the period between January and March, 2008. Therefore, he was a director when the alleged offences were committed, if they were committed at all. It is possible for a director, or officer of a company to be charged with a criminal offence relating to the affairs of the company. However, in the present case (according to the charges disclosed in the application) the attempt appears to charge people in person, rather than as a directors or officers of a company, while in fact the copies of agreements filed herein, show that it was the company REAL CARS LTD, which entered into agreements to supply cars to clients. In my view, this matter needs further investigations through the Judicial Review process. There is a possibility that the criminal process is being used to settle civil or commercial debts. That could as well amount to an abuse of court process, which has to be investigated and determined.

In the circumstances, I allow the application and order as follows-

- 1. I grant leave to the applicant to file Judicial Review proceedings as requested in prayer 1 of the Chamber Summons, provided that the main motion is filed within 15 days from today.*
- 2. The leave above granted shall operate as a stay as requested in prayer 2 of the Chamber Summons, provided the main motion is filed and served within 15 days from today, and in default the stay orders hereby granted shall automatically lapse. The stay shall operate for 90 days only from today, unless extended by the court.*
3. Costs in the cause.

Dated and delivered at Nairobi this 13th day of June, 2008.

GEORGE DULU

JUDGE

In the presence of-

Mr. Njenga for applicant

Mr. Mwangi for respondent

Mwangi Court Clerk