



REPUBLIC OF KENYA

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

Misc. Appli. JR 602 of 2008

IN THE MATTER OF CONSTITUTIONAL AND FUNDAMENTAL RIGHTS

V E R S U S

DIRECTOR OF CRIMINAL INVESTIGATION1ST RESPONDENT

THE COMMISSIONER OF POLICE.....2ND RESPONDENT

THE HON. ATTORNEY GENERAL.....3RD RESPONDENT

EX-PARTE

LAWRENCE NJOGU MUNGAI.....APPLICANT

AND

CHARITY KIRIGO KIMANI..... INTERESTED PARTY

R U L I N G

Before me is a Chamber Summons dated 29th September, 2008 filed by Violet Barasa & Company advocates for the applicant named as *LAWRENCE NJOGU MUNGAI*. The respondents are named as the *DIRECTOR OF CRIMINAL INVESTIGATION* (1st respondent), *THE COMMISSIONER OF POLICE* (2nd respondent), and *THE HON. ATTORNEY-GENERAL* (3rd respondent). There is also an interested party named as *CHARITY KIRIGO KIMANI*.

The application was filed with a *STATEMENT OF FACTS*, a *SUPPORTING AFFIDAVIT* and a *VERIFYING AFFIDAVIT*. It was filed under certificate of urgency. The orders sought in the application are as follows-

1. *That the application be certified as urgent.*
2. *That service be dispensed with and this application be heard ex-parte in the first instance.*
3. *That leave be granted to file an application for judicial review for orders of certiorari and prohibition.*

4. *That the respondents herein together with their agents and or servants be restrained from arresting and or charging the Applicant in a court of law until the application for judicial review is determined.*

5. *That costs be in the cause.*

At the hearing of the application, counsel for the ex-parte applicant, Mrs Barasa, addressed me. It was counsel's submission that the application was urgent. Counsel submitted that from May this year, the applicant had been continually harassed by the police and had been made to go to Kilimani Police station several times because of a complaint lodged by the interested party. Counsel submitted that the orders sought herein were clearly spelt out in the *STATEMENT* which was filed. Counsel submitted that the applicant had a *prima facie* arguable case, which justified the granting of the leave sought. Since the police at Kilimani had continuously harassed the applicant who had even been bonded by the police to appear in court, there was justification in granting the restraining orders sought. Counsel emphasized that the other parties involved in the subject commercial transaction had not been harassed by the police.

I considered the application, the documents filed and the submissions of counsel for the applicant. This application is in the correct format, but cites the wrong sections of the law. The Notice to the Registrar however, cites the correct legal provisions, that is order 53 of the Civil Procedure Rules. I take the wrong citing of the Law on the face of the Chamber Summons to be an error of form. I will observe that Judicial Review proceedings are brought under Order 53 of the Civil Procedure Rules and Section 8 and 9 of the Law Reform Act (Cap. 26). I do not think that the application herein is defective, anyway, and I rule that it is proper and valid application.

Having considered the application, and the arguments made to me, I am of the view that the ex-parte applicant has demonstrated a *prima facie* arguable case. He has also demonstrated a sufficient interest in the subject matter. I will grant the leave to file Judicial Review proceedings.

The applicant has asked for restraining orders against arresting or charging him in court, until the judicial review application is determined. The bond exhibited as "VB2" to the affidavit sworn by counsel on 2/10/2008 clearly shows that the applicant was required to appear in the Chief Magistrate's Court Kibera on 3rd October, 2008. This application was filed on 30th September, 2008 and heard on 3/10/2008, and ruling was deferred. In my view, granting restraining orders at this time would be superfluous, and serve no useful purpose. I will not grant restraining orders as I do not know the current position of the criminal matter.

I order as follows-

1. *Leave be and is hereby granted to the*

Applicant to file Judicial Review proceedings for certiorari and prohibition. The Notice of Motion will be filed within 21 days from today.

2. *I decline to grant restraining orders.*

3. *Costs will follow the determination of the Notice of Motion.*

Dated and delivered at Nairobi this 23rd day of October, 2008.

George Dulu

Judge.

In the presence of-

Mr. Mudikira holding brief for

Ms. Violet Barasa for applicant