



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

**Misc. Appli. 562 of 2008**

**JAMES MUCHENE NGEI.....APPLICANT**

**Versus**

**REPUBLIC.....RESPONDENT**

**RULING**

On 16<sup>th</sup> September 2008 the Petitioner filed the petition dated the same day pursuant to Sections 70 and 84 of the Constitution and Rules 11, 12, 13 and 14 of the Constitution of Kenya (Supervisory jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual), High Court Practice and Procedure Rules, 2006.

In the Petition, the Petitioner seeks two declarations that the Order made by the Chief Magistrate's Court in Nairobi CRC 2172/05 Rep v (1) James Kigathi Ndegwa alias Alexander James Ndegwa (2) Gladys Wairimu Ndegwa (3) John Kariuki that the case proceed to hearing is likely to contravene the fundamental rights of protection of the law of the Petitioner under S. 70 of the Constitution and that a declaration that the order of stay in HMisc 1642/05 Rep vs Chief Magistrate's Court ex parte John Kariuki Mungai do remain in force until the determination of the Notice of Motion by the ex parte Applicant dated 8<sup>th</sup> December 2005 and the Notice of Motion by the Interested Party be heard and determined in the High Court.

In the Chamber Summons dated 10<sup>th</sup> September 2008, the Petitioner seeks for stay of the proceedings of the Chief Magistrate's Court at Nairobi CRC 2172/05 pending the hearing of this application interpartes and the 2<sup>nd</sup> prayer is for stay of the same case pending the hearing of the petition dated 10<sup>th</sup> September 2008. The 1<sup>st</sup> prayer is already spent as no order was given exparte. It is the Applicant's contention that he is an Interested Party in the proceedings because after the arrest and charges CRC 2172/05 Kibera Court were preferred, the Accuseds moved the High Court for Judicial Review orders in HMisc 1642/05 in which an order of stay was granted stopping CRC 2172/05 from proceeding till the Judicial Review application was determined. That in the Judicial Review application the Applicant has filed a Notice of Motion seeking to have the Notice of Motion struck out and that the same matter is part heard and pending for hearing on 18<sup>th</sup> September 2008. I note that 18<sup>th</sup> September 2008 is already passed. That the stay order is still in place. That the Magistrate's order which was made 'ISUO Motto' was made without jurisdiction.

The Respondent did not appear though served. The petition is brought pursuant to S. 70 and 84 of the Constitution. The Petitioner generally pleads that his rights to protection of the law will be contravened as witnesses statements have not been recorded nor have the witnesses been bonded.

Section 70 of the Constitution is a declaratory section which declares the individual's rights generally. It lays the foundation of the Bill of Rights and it specifically provides that protection of the rights and limitations are contained in the various Sections of that Chapter. That Section in my view, cannot be cited alone. It should be cited along with other Sections 71 to 83 which provides for specific protections and limitations thereto.

It is trite law and the courts have repeatedly held that an application under chapter V of the Constitution should be precise as to the Section contravened, the Paragraph or sub paragraph and the nature of the contravention if need be to enable the Respondent adequately respond to the allegations. See the case of

ANNARITA KARIMI NJERU V REP 1979 KLR 154 pg 156 Trevelyan & Hancox JJ said;

“we would however again stress that if a person is seeking redress from the High Court or an order which invokes a reference to the constitution, it is important (if only to ensure that justice is done in his case) that he should set out with reasonable degree of precision that of which he complains, the provision said to be infringed and the manner in which they are alleged to be infringed”

In CYPRIAN KUBAI V STANLEY MWENDA HMISC 612/02. Justice Khamoni stretched it a notch higher and said that the paragraph or sub-paragraph should be specified.

Even if the Petitioner were to invoke S. 70, he has not specifically cited the subsection of Section 70 he comes under because it contains three paragraphs a, b & c. The Respondent would not know what to answer. If I understood the petitioner’s allegations, he seems to be alleging that he will not get a fair hearing and there are specific provisions under the Bill of Rights which deal with that and which he should invoke.

For an interim order to issue, one has to show that they have a prima facie case. From my observations above I do not think a cause of action is disclosed in the Petition and the prayer in the Chamber Summons cannot therefore be granted. The Chamber Summons is dismissed with costs.

Dated and delivered this 14th day of October 2008.

**R.P.V. WENDOH**

**JUDGE**

Present:-

Mr. Wachira for Applicant

Daniel: Court Clerk