



**MUSLIM HUMAN RIGHTS FORUM**

**AL-AMIN KIMATHI.....APPLICANTS**

**VERSUS**

**COMMANDANT OF THE ANTI-TERRORISM POLICE UNIT.....1<sup>ST</sup> RESPONDENT**

**COMMISSIONER OF POLICE.....2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**RULING**

On 17<sup>th</sup> August 2007, Apondi J. granted leave to the respondents to file a further affidavit within 4 days and also granted reciprocal leave to the applicant to file a further affidavit. The learned Judge fixed the application for hearing on 23<sup>rd</sup> August 2007 at 9.00 a.m. before the vacation Judge in the Criminal Division.

When the matter came before me on 23<sup>rd</sup> August 2003 Mr. Ndumbi appeared for the applicants, while Mr. Makura appeared for the respondents. Mr. Makura, learned State Counsel for the respondents informed me that they had filed and served further affidavit as directed by the court. However, the applicants had not served them with any further affidavit. Counsel submitted that the further affidavit 21/8/2007 clarified the issue that the subject had been released. That affidavit had not been challenged or controverted and therefore the respondent and therefore the respondent had complied with the legal requirements and explained why they could not release the subject to court. Counsel argued that a request to cross-examine police officers was made by the applicants counsel before Hon. Justice Apondi. The learned Judge did not make an order to that effect. That was after the counsel for the respondents opposed the application o summon police officers to give oral evidence. Therefore this court should not grant under dispute. The court can determine the issue on the basis of affidavits filed. But it can also require verification of the averments in the affidavits, before coming to a conclusion. It is instructive to note that initially the respondents appear to have been served, but did not attend court or formally response. Orders for production of the subject were then issued by the court. It was after issuance of those production orders that the respondents filed affidavits. The applicants are not satisfied with what is deponed in the affidavits of the respondents.

This matter involves the liberty and well being of a human person. It is not a matter to be taken lightly, and this court cannot do. It is, in my view, imperative that all relevant information is placed before the court to enable it make a proper decision or give proper directions. That, in my view, cannot be done in this case, without summoning the police who were holding the subject in their custody to appear in court and clarify the contested issues.

I therefore allow the request by counsel for the applicants and order that summons do issue on –

1. NICHOLAS KAMWANDE, the ATPU Commandant.
2. SIMON MURAGE of ATPU .
3. ALFRED MAJIMBO of ATPU
4. AL-AMIN KIMATHI
5. Any other person who might in the opinion of the court have relevant information relating to this matter.

This application will be heard on 13<sup>th</sup> September 2007 before the Criminal Vacation Judge.

Dated at Nairobi this 28<sup>th</sup> August 2007.

**George Dulu**

**Judge**

**In the presence of –**

Mr. Ndubi for applicants

Mr. Makura for State.