



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**HIGH COURT CIVIL CASE NO.1176 OF 2004**

**KAMAU JOHN KINYANJUI .....PLAINTIFF**

**VERSUS**

**THE HONOURABLE ATTORNEY GENERAL.....DEFENDANT**

**RULING**

I have read the Certificate of urgency and had a quick look at the Chamber Summons dated 29th October, 2004 and the affidavit in support thereof. I also had occasion to peruse the Originating Summons herein.

Without doubt, the Originating Summons is quite novel and unique in our legal system in Kenya. It is one of a kind. But the Chamber Summons is even more unique and unusual. It seeks to have the Applicant, who has been convicted by the High Court and sentenced to serve a term of 4 years, be released from prison by way of what Counsel refers to as a **CONSERVATORY ORDER** pending the hearing of the Constitutional Reference. I was referred to the **Maharajaoh Case from Trinidad and Tobago** of which I am aware though the report was not produced.

Having considered the application for certification and the fixing of an early date for the application., I would say that this matter involves a Constitutional Reference and raises allegations of violations of the Applicant's fundamental rights as enshrined in the Bill of Rights.

Once a party invokes the Constitution the matter takes a different dimension and assumes a greater significance than the other cases, for the Constitution is the Supreme law in our land.

It is Sanctimonious and this court is the primary enforcer and custodian of the Constitution. In the premises, the novelty, strangeness or unique-ness of the application ought not deter the court from giving this matter the usual urgency and significance accorded to Constitutional matters.

If there is a possible remedy under the Originating Summons it will be the Constitutional Court which will determine the matter as intended by the Applicant. It is not for me to go into the merits or possible outcome, etc.

Since the application touches on the liberty of the Applicant and he is convinced that he is entitled to a conservatory order for his release then the matter certainly is urgent.

I therefore do hereby certify the Application as urgent and direct that a date be given by this court on priority basis.

The Applicant desires to be present at the hearing. This matter touches on his claimed or perceived

Constitutional rights. The application herein is his property and unless there are any security risks he is entitled to be present.

I therefore make the following orders:-

1. That the Chamber Summons dated 29th October, 2004 is hereby certified as urgent and shall be heard on priority basis.
2. That the Application shall be heard on 16th November, 2004
3. The Respondent shall be served with the Application within the next 3 days from today.
4. A production Order shall issue to the Prisons Department and in particular the Officer in Charge of Kamiti Main Prison for the production of the Applicant to enable him attend the hearing of the said Application on 16th November, 2004 and as the court may direct from time to time. This is **SUBJECT** to Security considerations which if they exist must be notified to or disclosed to the court for any further directions.

Dated and delivered at Nairobi this 2nd day of November, 2004.

**MOHAMMED K. IBRAHIM**

**JUDGE**

**ORDER:**

The Applicant's Counsel to be supplied with certified copies of the Order which are to be served also on the Attorney General and the Prisons Department. Court charges to be paid as usual.

**MOHAMMED K. IBRAHIM**

**JUDGE**