

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

MISC. APPLICATION NO. 109 OF 2003

BENJAMIN MUTHOKIA MWANGI.....APPLICANT
VERSUS
REPUBLIC.....RESPONDENT

R U L I N G

The applicant herein has moved this court by way of Chamber summons to issue orders prohibition and termination of criminal cases Nos 986 of 2001, 1722 of 2001 and 2455 of 2001 pending before the lower courts. Going by the original records placed before me, the applicant together with others faces charges of obtaining by false pretences C/s 313 of the Penal Code Cap. 63 Laws of Kenya. Invariably in all cases, the applicant and his co-accused re said to have received some money from the complainants pretending that they were in a position to import vehicles for them.

The thrust of the application before me is that, the complainants raised in the charges are purely of a civil nature and disclose nothing that can be addressed by a criminal court. The application is opposed by the state. This court is not and can not be the investigator. It is not also the trial court. If the attorney General's office in its wisdom deemed it fit to file criminal charges against the applicant and others, which eventually turn out to be civil in nature, only the evidence adduced at the trial will tell. That is to say, whatever the applicant says in this application is a matter for the trial court and it is, premature to determine the issues before evidence is tendered and even tested under cross-examination.

For the foregoing reasons this application must fail. The same is hereby dismissed.

Order accordingly.

Dated and delivered at Nairobi this 27th day of March, 2003
MBOGHOLI MSAGHA
JUDGE