



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA AT MOMBASA
MISC. CIVIL APPLICATION NO.19 OF 2002**

IN THE MATTER OF: AN APPLICATION BY MOHAMED TWAHIR MOHAMED (THE APPLICANT) FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI, PROHIBITION, AND MANDAMUS.

A N D

IN THE MATTER OF: THE ORDERS AND RULING DATED 29TH & 31ST JANUARY, 2002 MADE BY THE CHIEF MAGISTRATE IN CRIMINAL CASE NO.286 OF 2002 REPUBLIC – VS- MOHAMED TWAHIR & 2 OTHERS

5.2.2002

Before: Hon. Justice Onyancha

Taib & Co., Advocates for the Applicant

Court Clerk Sango

This is an application to file for leave to file Review Judicial Proceedings for Orders of Certiorari, Prohibition and Mandamus against the orders issued by the Chief Magistrate Mombasa in Criminal Case No.286 of 2002. May the matter be certified as urgent since there is a Warrant of Arrest against the Applicant. The basic grounds upon which this application are:-

- (a) That the order made by the Chief Magistrate for the Arrest of the Applicant contravenes and goes against an order of the High Court made on 17.7.2001 restraining the arrest of the Applicant.
- (b) The Applicant was never summoned to court, if wanted, and therefore he did not fail to obey such or any summons to attend court.
- (c) That no complaints were lodged against the Applicants in Law Courts and therefore under S.90 and 101 of Civil Procedure Code the Chief Magistrate had no power to order the arrest of the Applicant. I submit copy of ss.

Under these circumstances the Chief Magistrate acted ultra vires and in excess of her jurisdiction. I rely on statement made in support of this Chamber Summons both dated 31.1.2002 and the affidavit in support sworn by the Applicant on the same date. If leave is granted, we pray that the same operate as a stay. There is a statement of facts in the file. The Registrar is already served.

RULING

I have carefully considered the grounds forwarded by Mr. Taib for this application. I have also considered the grounds in the affidavit in support of this application. The application raises an important issue of the

challenge of this court's powers. If statement of facts setting out the information required to be set out has been properly filed in this application and the full application has been properly served upon the Registrar of this court. All the requirements under O.53 of the Civil Procedure Act have been met. I am accordingly noting no impediments against the granting of the leave as prayed.

ORDERS

(a) This application is certified as urgent as prayed.

(b) That leave be and is hereby granted to the Applicant herein to file an application for orders of Certiorari, Prohibition and Mandamus against the order and ruling of the Chief Magistrate, Hon. Anne Okwengu made on 29th and 31st January, 2002 in Cr. Case No.286 of 2002 – Republic –vs- Mohamed Twahir Mohamed and Two Others.

(c) That this leave be and shall operate a stay of the order granting the Warrant of Arrest and the Warrant of Arrest itself against the Applicant and further proceedings in Cr. Case No.286 of 2002 – Republic –vs- Mohamed Twahir Mohamed pending the filing, the hearing and final determination of the applications filed or to be filed as hereinabove granted.

(d) That costs of this application be costs in the cause.

Dated at Mombasa this 5th day of February, 2002.

D.A. ONYANCHA

J U D G E