

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO 125 OF 2002

IN THE MATTER OF AN APPLICATION BY KENNETH MBOGO

MARARO

FOR AN ORDER OF PROHIBITION

IN THE MATTER OF: THE CHIEF MAGISTRATE'S COURTS AND

CHIEF MAGISTRATE'S COURT CRIMINAL CASE NO. 6366 OF

2001 AT NAIROBI-REPUBLIC –VS-KENNETH MBOGO MARARO

KENNETH MBOGO.....APPLICATION

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

The applicant has been charged in Criminal Case No 6366 of 2001 now pending hearing before the Chief Magistrate, with offences under the Public Health Act.

He has now moved the Court by way of Notice of Motion for an order of Prohibition based on the facts and affidavit annexed thereto.

The basis of such a prayer is that he did not commit any offence or breach to warrant the charges and the only reason the same were levelled against him was that the officer from the Nairobi City council at whose instance the charges were laid wanted to extort money from him-the applicant- and therefore any prosecution is actuated by malice.

There is uncontroverted evidence that an officer from the Council by the name Daniel Mwangi Wanjau has been charged with the offence of corruption and Criminal Case No.2634 of 2001 is pending hearing.

The facts as stated in the statement and verifying affidavit have not been controverted at all as there have been no affidavits filed in reply thereto. That notwithstanding, the visit to the premises of the applicant by the officer from the Nairobi City Council cannot be divorced from the extortion allegations as the sequence of events were too close.

I bear in mind that the corruption case against the said officer may not have been finalized; but I note also that his name is the only one listed as a witness. It is the applicant herein who caused him to be arrested. How can the proceedings against the applicant proceed under the circumstances? I believe the interests of justice will be met if I made final orders herein. The order of prohibition is hereby granted as prayed. The proceedings before the lower court against the applicant in Criminal Case No. 6366 of 2001 are hereby terminated. There shall be no order as to costs.

Orders accordingly.

Dated and delivered at Nairobi this 18th day of June, 2002

A.

MBOGHOLI

MSAGHA

JUDGE

Mr Malik for applicant

Mr Osoro for Nairobi City Council

Miss Okumu for the state