

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL APPLICATION NO.557 OF 2001.

AMRIK SINGH RIHAL 1ST APPLICANT

SURINDER RIHAL 2ND APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

Before me is an originating notice of motion filed on the 2nd August, 2001 by the Law firm of M/s OLUOCH-OLUNYA & CO. Advocates for and on behalf of AMRIK SINGH RIHAL and SURINDER SINGH RIHAL (referred to as “applicant”) who are seeking for an order restraining the Officer Commanding Gigiri Police Division (OCPD) and the Officer Commanding Police Station (OCS) from arresting, harassing or intimidating the applicants in any manner, whether by themselves, or by officers under their command. Applicants seek a further order directed at the OCS Gigiri to release to them a log-book of Motor Vehicle Reg.No.KSR 065 which the said OCS Gigiri is holding as security for alleged debt the applicants owe one DILIP RANIGA (referred to being as “Regina”). These orders are being sought under Section 60, 67, 70, 74, 75, 76 and 84 of the Constitution of Kenya.

The facts which have been established in support of them application are these. The 1st Applicant is a Director of BRICON PROPERTIES LTD (BPL) which, inter alia, is the registered proprietor of land Parcel No. L.R. No.1870/1/342 MAUA CLOSE, Westlands, Nairobi on which is constructed a Maisonette. On several days in the months of May and June 2000, BPL placed advertisements in the EAST AFRICAN STANDARD, informing the general public that the said premises were available for renting. Following the said advertisements RANIGA contacted the 1st applicant, saying he was interested in renting the said property to use the same as offices for his travel business. After fruitful negotiations BPL agreed to lease the said premises to Kisumu Travellers LTD., a company in which RANIGA is the Managing Director. This lease was for a term of five years commencing on 1st August 2001 at a monthly rent of Shs.50,000 payable quarterly in advance plus a two month's deposit of Shs.100,000. This said lease was duly executed embodying these terms. Pursuant to the said lease RANIGA issued two cheques dated 5.7.2000 and 20.7.2000 for Shs.100,000 and Shs.150,000 respectively, making a total of KShs.250,000 paid to the 1st Applicant.

After this payment RANIGA informed the applicant that he no longer required the said premises for offices but as a Jewellery Workshop, and demanded BPL to make the necessary application for change of user from residential to commercial. RANIGA also demanded to be given building plans of the said premises because he proposed to make significant structural alterations to the said premises. The applicants rejected all RANIGA’S demands.

By 1st August, 2000 the said premises were ready for occupation but RANIGA declined to take possession and demanded the refund of Shs.250,000 plus Shs.50,000 interest (Shs.300,000) Applicants refused to refund this money, citing the lease agreement. As RANIGA refused to take possession of the premises, the applicants decided to lease the same to a Third Party so as to mitigate their loss. It was then that RANIGA made reports to the OCS Gigiri leading to the applicants’ arrest on 16th July, 2001 and being taken to Gigiri Police Station where the applicants were warned that, if they did not pay RANIGA his Shs.300,000 they would not be released. The applicants were subsequently released on police Form 18 after paying cash bails of Shs.25,000 each (Shs.50,000) to appear before the Chief Magistrate’s court Nairobi on 18th July, 2001 where they would be charged with Obtaining By False Pretences contrary Section 313 of the Penal Code. The applicants went to the court on 18th July, 2001 but they were not charged with any criminal changes, then and now. Later on the Police Officers at Gigiri released the cash

bail (Shs.50,000) paid by the applicants to RANIGA, which the latter acknowledged Receipts of.

Because of the foregoing the applicants have made submissions through their learned advocates that the dispute between the applicants and RANIGA is purely of a civil nature, that the police should not have become involved in it, that the arrests and detention of the applicants, however brief, were wrongful and violated their constitutional rights guaranteed under Chapter V of the Constitution of Kenya, and further constituted an abuse of power and process by the police.

Mr. Mungai, learned State Counsel, does not contest this application and has termed the actions of the police, harassment of the applicants for purely a Civil dispute.

The Republic has thus conceded that the actions of the police officers are unconstitutional and amount to an abuse of police power. Therefore the remedies sought in this application are available. I accordingly grant prayers 4 and 5 in this originating Notice of Motion as prayed. Costs of this application will be paid by the Police Force through the Attorney General's office.

It is so ordered.

Dated this 28th August, 2001.

A.G.A. ETYANG'

JUDGE

Delivered this 28th August, 2001 in the presence of Mr. Amolo for the applicant and Mr. Mungai for the Respondent/Republic. Helen Wanja Court clerk in attendance.

A.G.A. ETYANG'

JUDGE

28.8.2001