



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
MISC. CRIMINAL APPLICATION NO. 82 OF 2001

IN THE MATTER OF: AN APPLICATION BY FELA MOHAMED SULEIMAN
on behalf of ALI SHARIFF SAGAAF

AND

IN THE MATTER OF: The Criminal Procedure (Directions in the Nature of Habea Corpus) Rules

AND

IN THE MATTER OF: An Application for an Order of Habeas Corpus Ad subjiciendum

BETWEEN

THE REPUBLIC OF KENYA – Ex-parte

ALI SHARIFF SAGAAF APPLICANT

=VERSUS=

- 1. THE FEDERAL BUREAU OF INVESTIGATIONS (FBI0**
 - 2. THE COMMISSIONER OF POLICE through**
 - 3. THE HONOURABLE THE ATTORNEY – GENERAL**
- RESPONDENTS**

MR. GUMO

Chief Inspector Ikiara was to be cross-examined today. He may have had a problem of transport from Nairobi. Secondly I am bereaved very closely. I received the information last night. I am not therefore in a position to go on. I seek an adjournment to any date between 2nd to 8th January 2002. I have mentioned my predicament to Mr. Taib.

MR. TAIB

I will accommodate my learned friend due to the bereavement he has got. But chief inspector Ikiara has not turned up in court to be cross examined. By orders of 11/12/2001, affidavits on matters of Government policy on the issue were to be filed. I had requested for commissioner of police to attend in person. Bearing in mind the absence of chief inspector Ikiara and commissioner of police, I propose that both be ordered to attend court in the next hearing date personally to facilitate progress in this hearing.

I am aware that counsel has no control over the said officers. Accordingly this matter may not take off at all if they do not come. We have been lucky to get 10 hearing dates but none has taken off. We have no objection to adjournment under the circumstances stated.

D.A. ONYANCHA

JUDGE

MR. GUMO

I was trying to get commissioner of police to himself to respond. It might be too much to ask him to attend the court. He is well represented in this matter. By the next hearing date supplementary and other affidavits will be on record.

RULING

Mr. Gumo, state Counsel and Counsel for respondents has once again sought for an adjournment. He is bereaved. He accordingly is unable to proceed. The application for adjournment is therefore made on a reasonable ground and is hereby granted. The court however notes that Chief Inspector Ikiara who was supposed to be cross examined today has not turned up. He has not sent anyone to explain his absence so much so that his counsel Mr.Gumo had to try and raise an excuse on his behalf based not on fair but belief that he may have missed transport to bring him down from Nairobi to Mombasa. The excuse is totally unacceptable to this court. Transport from Nairobi to Mombasa is more than adequate especially where the party wishing to travel has to attend court to give evidence. We have public transport vehicles if there was no Government car available for him. Air travel is also available almost every two to three hours of the day. He is a member of the disciplined forces and by his rank would understand the seriousness of attending or not attending court. His failure to attend after he was so ordered when he attended last, tends to suggest the tendency that has persisted in these proceeding from its early stages. About ten (10) attendances have been made by Counsel in this matter. There have been serious failures to attend court on his part before. However, the court was understanding all along. As I have said before, this case touches on the serious and important issue of the interference of a citizen's liberty. The latter is effectively secured and protected by the Constitution of the Republic of Kenya. Chief Inspector's attendance is very necessary for both the Applicant and the Respondent to help court make decisions that would help to protect the provisions of the Constitution for the good of every citizen.

But, sadly, Chief Inspector Ikiara may not be probably sharing this concern. He accordingly should come to court and show cause why this court should not take action against him for disobeying this courts orders. The he will do before any further proceedings are continued.

As to the absence of the Commissioner of Police, this court has so far not made direct orders for his attendance. It was understood, quietly, that responding documents to this matter would come from either the Commissioner of Police or his assistants explaining the issues raised in this matter and laying the state policy relevant to the principles relating thereto. This court believed that if such documents were filed, they would eliminate the need to summon the said senior officers to attend court by themselves to be cross examined. Mr. Gumo has indicated that the documents aforementioned will have been filed by the time the matter comes up for hearing early in January. The court leaves the matter to rest at that for the time being.

Accordingly adjournment is granted to 3rd and 7th January 2002. Inspector to attend court and show cause why this court will not take contempt action against him for failure to attend court today, the 19/12/2001. Mr. Gumo to file additional replying affidavits from the commissioner of police or his senior assistants on or before 28/12/2001. Service of same to be affected upon the applicant on or before 31/12/2001. Costs in the cause.

It is so ordered.

Dated and Delivered this 19th day of December, 2001.

D.A. ONYANCHA

JUDGE