

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

**AT NAIROBI
MILIMANI LAW COURTS**

MISC APPLICATION NO. 721 OF 2000

ANDREW DOUGLAS GREGORY.....APPLICANT

VERSUS

THE CHIEF MAGISTRATE

NAIROBI.....RESPONDENT

RULING

The applicant Mr. Andrew Douglas Gregory prays for leave to apply for an order of prohibition directed to the Chief Magistrate to prohibit him from hearing or further hearing of criminal case no. 240/2000. Applicant also prays that the grant of leave do operate as a stay of proceedings until the determination of the application for prohibition.

The application is supported by a long statement, copious documents and a verifying affidavit. There are 36 grounds from NO. 53 to 88 upon which relief is sought. Perhaps para No. 75 of the grounds summarizes all the grounds aptly that the machinery of criminal justice is being used as a pawn in personal civil feuds and individual vendetta. I have read the correspondence from page 360 to page 384 of Annexure is that the applicant was a receiver appointed by ABN - AMRO BANK in respect of a Debenture allegedly executed by ROSAFRIC ltd.

It seems that what RosAfric Ltd is saying is that appointment of applicant as a receiver was illegal because the money secured by the Debenture was not paid to RosAfric ltd. but diverted to personal accounts of two Bank officials. ROSAFRIC further contends that the debenture under which the applicant was appointed as a receiver was illegally activated as a result of fraud and therefore the appointment of the applicant as Receiver under the Debenture was invalid.

It seems further that applicant is charged in court with bank official with offence of attempting to obtain the money allegedly loan to RosAfric ltd by false pretences. The bank officials are charged in separate courts with offences of fraudulent false accounting. Although I have heard the Republic's case it seems that the money applicant charged with falsely attempting to obtain is the money he was trying to recover under the debenture as a receiver for the Bank. That is to say money he was trying to recover for the bank in execution of his receivership duties. If that the correct interpretation of the first court in the criminal charges then I am satisfied that applicant has shown a prima facie case for grant of the order of prohibition.

As for the prayer that the Grant of leave do operate as a stay of proceedings, this is a discretionary remedy. I note that applicant was charged in the criminal case in the month of January, 2000. Trial of the criminal case is scheduled for today. Applicant only came to court 2 days before date of the trial. The prosecution may have bonded witnesses and prepared for the hearing today.

It would put the Republic into great inconvenience and expense to halt the proceedings today. It would also put the court diary into disarray. It seems from the documents before me that the trial will take a long time.

In the circumstances, it is not just to interrupt the proceedings. The applicant has the remedy of prosecuting the application for Judicial review promptly before any significant progress of the criminal case.

For those reasons I grant leave in terms of prayer A of the application dated 4.7.2000 but I decline to grant the order` sought in prayer B of the application.

E. M. Githinji

Judge

6.7.2000

Mr. Nowrojee for the applicant