



Mwangi v Director of Criminal Investigations & 2 others (Miscellaneous Criminal Application E017 of 2023) [2024] KEHC 8516 (KLR) (9 May 2024) (Ruling)

Neutral citation: [2024] KEHC 8516 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CRIMINAL APPLICATION E017 OF 2023
DO CHEPKWONY, J
MAY 9, 2024**

BETWEEN

MICHAEL MACHARIA MWANGI APPLICANT

AND

**DIRECTOR OF CRIMINAL INVESTIGATIONS & 2 OTHERS & 2 OTHERS
& 2 OTHERS & 2 OTHERS & 2 OTHERS & 2 OTHERS & 2
OTHERS RESPONDENT**

RULING

1. Before the court is the Notice of Motion application dated 23rd March, 2023 filed pursuant to Articles 10, 22, 23, 25, 27, 28, 29, 47, 48, 49 (1) (h), 50, 165(6) and 259, all of the Constitution of Kenya and Section 123 of the Criminal Procedure Code. It seeks the following orders:
 - a. Spent.
 - b. Spent.
 - c. Spent.
 - d. That this Honourable Court be pleased to issue a conservatory order restraining the Respondents, their servants, agents, junior officers and or anybody arbitral arresting, charging, harassing, or otherwise however interfering with the Applicant without conducting investigations and according him an opportunity to be heard to wit issuing him summons for him appear in any officers to record statements (if need be)
 - e. That the Honourable court do issue further or other orders that in its discretion may deem fit and just in the circumstances.
 - f. That the costs of the application be provided for.



2. The Application is based on the ground set out on its face and the Supporting Affidavit of Michael Macharia Mwangi sworn on 23rd March, 2023. The Applicant avers that he is a politician and a business man formerly trading as Sir Michaels Tours and Safaris which entailed processing of visas and making arrangement for travels across the world. He has stated that for the years between 2020 and 2022, his business was affected by Covid - 19 which led to travel bans and the Ukraine war which restricted inflow into the country. That these challenged adversely affected his clients since the visa applications were either suspended or cancelled leading to an uproar from his clients.
3. The Applicant contends that as a result of these unfortunate turn of events, he has been put under embarrassment, shames and ridicule by his political rival to the extent that he has been arbitrarily summoned by the 1st and 2nd Respondents in utter misuse of power and arrested and detained on several occasions without any formal charges. He holds that he has credible information that he is being tracked and could be arrested and charged over charges he knows nothing about.
4. According to the Applicant, he has been reaching out to his clients in a bid to reaching an amicable settlement over the refund of the deposits they had made for their travel arrangements, and therefore there is no criminal element in his actions. He has also stated that the 1st and 2nd Respondents are abusing their powers of arrest and are using the same to harass, intimidate and oppress him. The Applicant holds that he is a law abiding citizen who is willing to submit to a just and fair legal system and has therefore urged the court to allow his application.
5. When the matter was filed and served, Ms Ngesa, Counsel for the state sought leave of the court to file a response to the application which was granted on various occasions being 5th April, 2023, 5th July, 2023, 21st December, 2023 and lastly on 7th May, 2024 but no response was filed. On the 7th May, 2024, Ms Ngesa informed the court that she had looked at the application and found that the Applicant had come to court with clean hands hence had no objection to the orders being sought.
6. The court has considered the application made by the Applicant and the supporting Affidavit therein and finds that the same is unopposed, and or challenged for being meritable.
7. The upshot is that the Notice of Motion application dated 23rd March, 2023 is hereby allowed and the following order issue:-
 - a. A Conservatory Order is hereby issued restraining the Respondents, their servants, agents, junior officers and or anybody arbitral arresting, charging, harassing, or otherwise however interfering with the Applicant without conducting investigations and according him an opportunity to be heard to wit issuing him summons for him appear in any officers to record statements (if need be).
 - b. That there shall be no orders as to costs.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS ...9TH ... DAY OF ...MAY..., 2024.

D.O CHEPKWONY

JUDGE

In the presence of:

Mr. Munene holding brief for Mr. Kaburu for Applicant

No appearance for 1st and 2nd Respondents



M/S Ndeda counsel for the 3rd Respondent

Court Assistant - Martin

