



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**MISC. CRIMINAL APPLICATION NO.1 OF 2019**

**BALE BALE CLUB.....APPLICANT**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTION.....1<sup>ST</sup>RESPONDENT**

**DIRECTOR OF CRIMINAL INVESTIGATIONS.....2<sup>ND</sup>RESPONDENT**

**TRANSNATIONAL ORGANIZED CRIME UNIT.....3<sup>RD</sup>RESPONDENT**

**RULING**

The Applicant filed the present application pursuant to the provisions of **Articles 19, 20, 21, 22, 23, 25, 27, 47, 48, 50 and 151** of the **Constitution** together with certain **Articles** of the **African Charter on Human and Peoples Rights and International Conventions** and other enabling legislation seeking conservatory orders from this court to restrain the Respondents by themselves, their agents and servants from entering, harassing, intimidating, arresting and doing anything that is prejudicial to the Applicant, their directors, partners and employees. The application is supported by the annexed affidavit of Mika Osichiro. He swore a further affidavit in support of the application. He does not state in what capacity he swears the affidavit on behalf of the Applicant other than state that he had the authority of the Applicant to swear the affidavit.

The Applicant complains that the Respondents had sent police officers from the Transnational Organized Crime Unit to arrest the Applicant's employees notwithstanding that the Applicant had complied with all the statutory requirements and regulations. The Applicant states that it is engaged in legitimate business but has had its business disrupted by the Respondents' unlawful actions. The Applicant was of the view that investigations being carried by the Respondents were not in good faith and was tantamount to persecution. The Applicant further states that the investigation was an abuse of due process of the law. In the premises therefore, the Applicant craves for appropriate orders from the court to restrain the Respondents from further harassment and intimidation.

The application is opposed. Esther Njuguna, a prosecuting counsel at the office of the Director of Public Prosecutions swore a replying affidavit in opposition to the application. The Respondents further filed notice of preliminary objection essentially stating that the issues that the Applicant seeks to canvass were overtaken by events. In the premises therefore, the Respondents urged the court to dismiss the application as it lacked merit.

During the hearing of the application, this court heard oral rival submission made by Mr. Ondieki for the Applicant and by Mr. Owiti for the Respondents. What emerged from the submission, and the pleadings filed is that the Applicant had obtained work permits for certain cultural dancers from Pakistan to be allowed to ply their trade at the Applicant's premises. The Applicant annexed documents from the Directorate of Immigration Services and from the Ministry of Sports Culture and Heritage allowing the dancers to work for the Applicant for a three month period. There was dispute between the Applicant and the Respondents as to when this period was to expire. What is not in dispute is that on 31<sup>st</sup> December 2018, the police raided the Applicant's premises, arrested the cultural dancers and had them detained on allegation that they were performing at the Applicant's premises without the requisite permits. There was a to and fro as the Applicant sought the release of the dancers while awaiting determination of a case which they had lodged in court. As it was later to transpire, while the case was pending, the dancers were repatriated back to Pakistan.

The thrust of the Applicant's application is that it is fearful that the police and other government agencies will interfere with the running of its business. It sought orders from this court to restrain the Respondents from interfering with its legitimate business. Other than the repatriation of the dancers from Pakistan, the Applicant did not state how its business has been affected by the Respondents. It was on that basis that the Respondents argued that the issue that provoked the application had been overtaken by events. It is the Respondents' contention that they have done nothing to interfere with the Applicant's business other than repatriate the dancers who were working in the country illegally. The Respondents also suspected that the said dancers may have been victims of human trafficking. No proof was presented to court to support this allegation. However, what is clear before this court is that the substratum of the Applicant's application appears no longer to exist. The dancers have been repatriated. There is no evidence that was placed before this court to suggest that the Respondents are interfering with the Applicant's business. If the Applicant was aggrieved by the repatriation of the dancers, its remedy lies elsewhere in the Civil Court.

This court cannot issue orders in vain. This court agrees with the Respondents that the event that forms the thrust of the Applicant's application is no longer a live issue. Since the Applicant did not present any concrete evidence of alleged harassment by the Respondents, this court cannot issue conservatory orders craved for by the Applicant. From the Respondents' response, it was clear that once they had dealt with the issue of the dancers, they no longer had any dispute with the Applicant and the conduct of its business. The Applicant has therefore not established to the required standard proof on a balance of probabilities that the Respondents have done or have continued to do anything to interfere with the Applicant's business. The application lacks merit and is hereby dismissed. It is so ordered.

DATED AT NAIROBI THIS 13<sup>TH</sup> DAY OF FEBRUARY 2019

L. KIMARU

JUDGE