



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT HOMA BAY

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO.16 OF 2017

IN THE MATTER OF ARTICLE 22 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF THE FAIR ADMINISTRATION ACTION UNDER

ARTICLE 47 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF THE CONTRAVENTION OF FUNDAMENTAL RIGHTS AND

FREEDOMS UNDER ARTICLES 2(1), 3(1), 10(2), 20(2), 22, 23,

24(1), 25, 27(1), 28, 29,39, 48, 49, 165(3), 258 AND

259 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF SECTION 123(1) PART 5 OF THE CRIMINAL

PROCEDURE CODE CAP 75 INHERENT JURISDICTION OF THE

HONOURABLE COURT & GENERAL PRINCIPLES

OF NATURAL JUSTICE & THE RULE OF LAW

BETWEEN

SIYAD HASSAN EDO.....PETITIONER

AND

THE DIRECTOR OF PUBLIC PROSECUTION.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

THE DIRECTORATE OF CRIMINAL

INVESTIGATIONS DEPARTMENT.....3RD RESPONDENT

RULING

1. **SIYAD HASSAN EDO** (the petitioner) has sought for declaration that the Director of Public Prosecution's (1st respondent) order by a letter **ODPP/MAR/CR 1/1/14** to arrest and charge him with a felony is an infringement to his constitutional rights and the letter be declared a nullity.

2. He has enjoined the Hon. The Attorney General (2nd respondent) as the principal legal advisor to the government and representative of the national government in court or any other legal proceedings in which the government is a party by dint of **Article 156** of the **Constitution**.

3. He has also enjoined the Director of Criminal Investigations (**DCIO**) [3rd respondent] who reports to the Inspector General of Police.

4. The background to the matter is that sometime in the year 2015, **JOSEPH OKOTH ANANGA** (then the Officer Commanding Anti-Terrorist Police Unit [**ATPU**] Manderla released two terror suspects without entering their arrest or release in the police Occurrence Book [**OB**].

5. The petitioner immediately informed the County Criminal Investigating Officer (**JOHN OTIENO**) and the County Officer ATPU (**NYALI MUNGA**) about the unlawful release of the suspects.

6. It is the petitioner's contention that the officer **JOSEPH OKOTH**, did not follow the required procedures in relation to the release and the County Criminal Investigating Officer **JOHN OTIENO** instituted an inquiry and appointed **JEPHER MAINGI** (then DCIO Manderla North) to immediately institute investigations into the matter, and upon completion of the investigation, a finding was made that **JOSEPH OKOTH** was responsible for the irregular release of suspects. Consequently the DPP advised that the said **JOSEPH OKOTH** be charged and indeed he was charged in **Manderla Case No.373 of 2017**, in which the petitioner is a key witness.

7. However the 1st and 3rd respondents have now threatened to use police to arrest the petitioner on pretext that he aided and facilitated the commission of a felony, which make him feel harassed and intimidated.

8. Is there any evidence presented to the court suggesting that the recommendation by the DPP to have the petitioner charged for the offence was informed by discriminatory consideration? I find none. If as the applicant/petitioner says he merely did his duty and obeyed his senior, then that would obviously come out at the criminal trial.

9. What I can decipher is a panic reaction, and I wonder the mala fides in coming all the way from North Easter Province to Homa Bay to file this petition yet there are other High Courts within and near Manderla which could have handled this matter.

10. The entire petition reeks of bad faith and I will not delve further on it ... in my view it lacks merit and is dismissed for want of merit.

Delivered and dated this 5th day of February, 2018 at Homa Bay

H.A. OMONDI

JUDGE