



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

PETITION NO. 18 OF 2016

**IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF FUNDAMENTAL
RIGHTS AND FREEDOMS UNDER THE CONSTITUTION OF KENYA ARTICLES**

1, 10, 22, 23, 50, 157 AND 259 OF THE CONSTITUTION OF KENYA, 2010.

BETWEEN

SHAIBU HAMISI MTUWA.....PETITIONER

-VERSUS-

THE DIRECTOR OF PUBLIC PROSECTUTION

THE DIRECTORATE OF CRIMINAL INVESTIGATIONS

DEPARTMENT, MALINDI.....RESPONDENTS

AND

JOSEPH MUNYOKI NZIOKA

ELIZABETH R. NZIOKA.....INTERESTED PARTIES

RULING

The application date 2/9/2016 seeks the following orders: -

THAT pending hearing and determination the petition, a conservatory order do issue restraining the Officer Commanding Taru Police Station or any other police officer acting under his authority from arresting, detaining, charging and/or prosecuting **JOSEPH MUNYOKI NZIOKA** and **ELIZABETH R. NZIOKA**, the Intended Interested Parties/Applicants herein with charges arising from and or incidental to the allegations of witch crafts in the Petition and Malindi Criminal Case No. 549/16.

THAT this Honorable Court be pleased to enjoin **JOSEPH MUNYOKI NZIOKA** and **ELIZABETH R. NZIOKA** as interested parties in the Petition.

The application is supported by the applicant's affidavit sworn on the same date. The petitioners filed a

notice of preliminary objection. Parties agreed to determine the application by way of written submissions.

The dispute herein starts from allegations of witchcraft. The petitioner was charged in Malindi Criminal Case number 549 of 2016 with the offence of threatening to kill through witchcraft. The interested party (applicant) was equally to be charged before the Mariakani Court with a related offence as a result of complaints made to the Taru Police Station by the petitioners, the applicant is now seeking to be enjoined as an interested party in the petition and also seek orders to stop his intended prosecution.

I have read the submissions by the respective advocates for each party. This Court granted stay orders against the prosecution of the petitioner. I do not wish to delve deep into the submissions by the counsels as they go into the merits of each parties case. Since the dispute involve the same facts and source, I do find that it is prudent to allow the application so that the two parties can be heard on their respective positions. The ideal situation would have been for the interested party to file his own petition and have them consolidated. It will be unfair to allow the interested party to be charged in court while the petitioner enjoys stay orders. The parties should approach the court on an equal footing.

I am satisfied that the application dated 2/9/2016 is merited and the same is hereby granted as prayed. Costs shall follow the outcome of the petition.

Dated, Signed and Delivered at Malindi this 21st day of February, 2017.

SAID J. CHITEMBWE

JUDGE