



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW

MISCELLANEOUS APPLICATION NO. 124 OF 2017

**IN THE MATTER OF AN APPLICATION BY BILLY SHIGOLI AMUNKUNE FOR LEAVE TO
APPLY FOR AN ORDER OF PROHIBITION, MANDAMUS AND CERTIORARI**

AND

**IN THE MATTER OF AN APPLICATION FOR ENFORCEMENT OF FUNDAMENTAL
RIGHTS UNDER ARTICLE 20(1), (2) & (3), ARTICLE 22(1) 3(B)&(4), 165(3) (B) AND
ARTICLE 23(1) OF THE CONSTITUTION**

AND

**IN THE MATTER OF AN APPLICATION BY BILLY SHIGOLI AMUNKUNE FOR
DECLARATION THAT THE PROSECUTION OF THE APPLICANT IN MILIMANI CHIEF
MAGISTRATE'S COURT CR. CASE NO. 12 OF 2017 VIOLATES, INFRINGES OR
THREATENS THE APPLICANT'S RIGHT OF FUNDAMENTAL FREEDOM AND THE SAME
IS NOT JUSTIFIABLE.**

AND

**IN THE MATTER OF ARTICLE 23 OF THE CONSTITUTION OF KENYA AND SECTION
316A (2) OF THE PENAL CODE**

AND

**IN THE MATTER OF THE PROSECUTION OF THE APPLICANT OVER AN ALLEGED BAD
CHEQUE.**

BETWEEN

REPUBLIC.....APPLICANT

AND

THE INSPECTOR GENERAL OF POLICE.....1ST RESPONDENT

THE DIRECTOR OF CRIMINAL INVESTIGATIONS.....2ND RESPONDENT

VERSUS

BILLY SHIGOLI AMUNKUNE.....EXPARTE APPLICANT

16.3.2017

Coram before R.E. Aburili J

Duty Judge

In chambers

Court:

I have perused this file and I find two applications dated 15th March 2017. One is a chamber summons and the other is a notice of motion, brought under Order 53 Rule 1 and Order 53 Rule 3 of the Civil Procedure Rules respectively.

The chamber summons seeks for leave to apply for Judicial Review orders of mandamus, prohibition and certiorari against the Inspector General of Police and the Director of Criminal Investigations; and a prayer for stay of prosecution. The notice of motion on the other hand seeks for substantive orders.

The chamber summons is said to be supported by an affidavit of the exparte applicant. However, that affidavit is annexed to the notice of motion not on the chamber summons.

In addition, there is no statutory statement accompanying the chamber summons but there is one accompanying the notice of motion for substantive orders.

Under Order 53 Rule 1(2) of the Civil Procedure Rules, the application for leave shall be made exparte to a judge in chambers, and shall be accompanied by a statement setting out the name and description of the applicant, the reliefs sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on.

In this case, the chamber summons as filed does not comply with the above rule. In addition, the prayers sought in the Chamber summons are joint such that one would not know what is certiorari, prohibition and mandamus would serve.

Further, the court notes that the notice of motion is already filed before leave to file is granted, contrary to Rule (1) (1) of Order 53 of the Civil Procedure Rules.

The court further notes that there is a charge sheet showing there is a pending case before court in Milimani CM's Criminal Case No.12/2017 against the applicant herein.

The police who are parties to these proceedings as respondents, and the Director of Criminal Investigations only play an investigative and arresting role as stipulated in Section 24 of the National Police Service Act.

On the other hand, the decision to prosecute the applicant is taken by the Director of Public Prosecutions as stipulated in Article 157 of the Constitution and the Office of the Director of Public Prosecutions Act.

Further, the trial is conducted by the Chief Magistrate not the police.

In this case, neither the Director of Public Prosecutions who are the prosecutors, nor the Chief Magistrate who is in control of the criminal proceedings are parties to this case. It therefore follows that to grant leave against the police is a waste of judicial time and resources.

The applications hereto are fatally incompetent for non compliance with Order 53 of the Civil Procedure Rules. They lack merit and cause confusion to the judicial process. They are an abuse of the court process. They are hereby dismissed with no orders as to costs.

Orders accordingly.

R. E. ABURILI

JUDGE

16/3/2017