



**REPUBLIC OF KENYA**

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

**CRIMINAL DIVISION**

**CRIMINAL REVISION NO.138 OF 2016**

**HEINZ BROER.....APPLICANT**

***VERSUS***

**PETER KIMUNYE KAGWE.....1<sup>ST</sup> RESPONDENT**

**OCPD KAYOLE, LUBISIA.....2<sup>ND</sup>RESPONDENT**

**RULING**

The Applicant, Heinz Broer filed an application before this court, essentially seeking intervention by the court to have the police investigate numerous complaints that he had lodged with the police. The Applicant has filed thirty (30) complaints with the police that appear in OB reports between 2008 and 2017. According to the Applicant, the police had failed to accord seriousness to the complaints by having them investigated and prosecuted. When the Applicant first appeared before this court, this court directed the Divisional Criminal Investigation Officer based at Buru Buru Police Station to write a report regarding the complaints filed by the Applicant in Kayole Police Station. That report was filed in court on 27<sup>th</sup> February 2017. The nature of the report of the complaints filed by the Applicant range from a complaint against a neighbour for encroaching on his parcel of land to seeking the intervention of the police to have a tenant who had defaulted in paying rent compelled to do so. Others included allegations of receiving abusive text messages from various persons. The Applicant also complained about a neighbour who had interrupted him when he was using a concrete mixture. The Applicant has also had disputes with the Chairman and Secretary of the Residents' Association in the place where he lives. He has also had complaints lodged with the police related to the manner in which he was treated by the security guards within the estate that he resides. He further made complaints of theft and malicious damage to property. These are but a few of the complaints that the Applicant has over the years filed with the police.

According to the police, the complaints lodged by the Applicant are essentially of a civil nature which the police cannot investigate or be involved in. From the report, the police advised the Applicant to seek appropriate remedy before a civil court. It appears that the Applicant did not take this advice kindly. He was and is still adamant that the police have formed an opinion about him that has resulted in complaints that he has lodged with the police being treated in a discriminatory manner. During the hearing of the application, the Applicant reiterated that he had lodged legitimate complaints before the police. The least the police could do is to investigate the complaints and take appropriate action, including, and not limited to, having those accused charged in court. The Applicant was not satisfied with the status report of his complaints that was filed in court by the police. He was of the view that the report revealed the discriminatory and contemptuous manner in which he was treated by the police. The Applicant urged the court to issue appropriate orders so that he can have a remedy to the issues that he has filed with the court.

In response to the application, the State was of the view that the police had done all that it could do in accordance with the law. The majority of the complaints lodged by the Applicant with the police were civil in nature. The Applicant had been advised accordingly but had refused to take the advice. In respect of the complaints that were of a criminal nature, the police had not been able to get any suspects or witnesses to the criminal acts that were perpetrated against the Applicant. It was the State's position that the Applicant had not placed any material before the court that would enable the court make any finding

in his favour.

This court has carefully considered the facts of this application. It was clear to the court that the basis of the Applicant's complaints is a misunderstanding of the mandate of the police. The Applicant is a German national who probably grew up under the European Civil Law regime where there is a blur, sometimes, in what constitutes a criminal complaint and a civil one. Ordinary disputes with neighbours which may or may not result in a civil dispute have been reported to the police by the Applicant. Some of the complaints, on the face of it, do not reveal any crime that has been committed. The fact that the police did not take action when such complaints were lodged was understandable in the circumstances because the police cannot launch investigations where a crime has not been committed.

Initially, the court empathized with the Applicant's plea seeking the court's intervention in the matter and have the police called to the court to give account of their action. Upon reading the status report filed by the police, it became apparent to the court that the Applicant misunderstands the role of the police in regard to the majority of complaints that he lodged with the police. Matters have not been helped by the fact that the Applicant is acting in person. He is not represented by counsel. He has not therefore benefited or has chosen not to benefit from legal counsel. The advice given by the police to the Applicant to pursue some of the complaints for appropriate remedy through the civil process is not without merit.

Further, it is not every disagreement that the Applicant has had with his neighbours that can result in a civil suit being filed. If the Applicant feels sufficiently aggrieved that some of the complaints that he has filed with the police is not being properly accorded the attention it deserves, he is at liberty to make an appropriate application before the magistrate's court to be granted leave to institute private prosecution.

In the premises therefore, this court finds no merit with the Applicant's application. The police have done what was required of them by the law. This court has done what it could to afford the Applicant a remedy. The application is hereby dismissed. It is so ordered.

**DATED AT NAIROBI THIS 19<sup>TH</sup> DAY OF JULY 2017**

**L. KIMARU**

**JUDGE**