

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

MISC. CRIMINAL APP. NO. 3 OF 2016

ABDINASIR AHMED MOHAMED APPLICANT

V E R S U S

1. HON. ATTORNEY GENERAL 1ST RESPONDENT

2. MINISTER FOR DEFENCE 2ND RESPONDENT

3. THE DIRECTOR OF PUBLIC PROSECUTIONS 3RD RESPONDENT

RULING

An application for orders of habeas corpus by way of Notice of Motion dated 15th July 2015 was initially filed by the applicant Abdinasir Ahmed Mohamed through Omwoyo, Momanyi Michuki and Company Advocates at Nairobi. The Respondents were named as Hon. Attorney General as 1st respondent and the Minister for Defence as 2nd Respondent.

On the 23rd July 2015 Hon. Lady Justice G. W. Ngenye Macharia at Nairobi, made orders including an order that the Director of Public Prosecutions be made a party to the application.

As a consequence, on 27th July 2015 an amended Notice of Motion was filed naming the Director of Public Prosecutions as the 3rd Respondent. Thereafter, the court in Nairobi made an order that the application be forwarded to the Marsabit High Court as the matter or complaint arose at Mandera Military Camp.

After the file was forwarded to the Marsabit High court, on 9th February 2016 the court ordered that the file be brought to Garissa, as Mandera area was within the supervisory jurisdiction of the High Court at Garissa. The file was thus transferred to this court.

At Garissa the matter was mentioned on 2nd March 2016, and on 4th May 2016 it was fixed for hearing on 6th July 2016 with an order that the Deputy Registrar of this court will issue hearing notices on all counsel for the parties.

On the 6th of July 2016, the court was informed of an advocates go slow in the whole country and the matter was thus fixed for mention on 18th August 2016 to fix a fresh hearing date. On the 18th of August a hearing date was fixed for 11th October 2016. As only the representatives of the Director of Public Prosecutions was present in court, the court ordered that a hearing notice be issued by the Deputy Registrar on the petitioners counsel as well as the Attorney General.

On the 11th October 2016, again only the representatives of the Director of Public Prosecutions was in court. Mr. Okemwa for the Director of Public Prosecutions then asked the court to dismiss the application for want of prosecution.

This is a serious application for habeas corpus. It is a serious application because it is alleged that the applicant has been held in custody of Government Officials for no apparent reason, and without information to any of his relatives or being availed legal assistance. It goes to the fundamental rights of

an individual under the Constitution.

The Director of Public Prosecution has asked that the application be dismissed for want of prosecution because the advocate for the applicant has not appeared in this court even once. I observe that the Military has through an affidavit sworn on 14th December 2015 by Major Dennis Muthike Munene, responded to the application.

I find no provision under the Criminal Procedure Code (cap.75) for dismissal of such an application for want of prosecution. However since the advocate for the applicant has not shown any interest in pursuing the matter, nor given an explanation for his failure to attend court, I have no alternative but to mark this application as abandoned as the application cannot be left pending in court indefinitely.

Consequently I mark the application as abandoned. It is so ordered.

Dated and delivered at Garissa this 9th day of November 2016.

GEORGE DULU

JUDGE