



**IN THE HIGH COURT AT NAIROBI**

**MILIMANI LAW COURTS**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**PETITION NO. 203 OF 2014**

**BETWEEN**

**SEN. JOHNSON N MUTHAMA ..... PETITIONER**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF CRIMINAL**

**INVESTIGATIONS ..... 2<sup>ND</sup> RESPONDENT**

**INSPECTOR GENERAL OF POLICE ..... 3<sup>RD</sup> RESPONDENT**

**HON. ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. This matter has been brought before the court by the petitioner who seeks the following interim orders;

*[2] That a temporary injunction do issue restraining the respondents, their agents, servants, employees and or representatives from arresting and or instituting criminal charges against the Applicant/Petitioner based on recommendations based on a letter from the 2<sup>nd</sup> respondent to the 1<sup>st</sup> respondent (CID/SEC/LCA/4/4/1/VOL.XIV dated 22<sup>nd</sup> April 2014) and based on investigations into the sale of 5,000 acres of land by Malili Ranch Company Limited pending the hearing and determination of this Application and petition.*

2. In the letter dated 22<sup>nd</sup> April 2014, the Director of Criminal Investigations wrote to the Director of Public Prosecutions stating that upon evaluation and assessment of a complaint made by the shareholders of Malili Ranch Limited, he had concluded that certain offences including stealing, making documents without authority, obtaining money by false pretences had been made out against the petitioner, amongst other persons.
3. In the petition dated 29<sup>th</sup> April 2014, the petitioner wishes to challenge the said findings by the Directorate of Criminal Investigations and accordingly quash them. Dr Khaminwa, counsel for the petitioner, contends that the letter was leaked to the public even before it reached the DPP thereby injuring his client. He submits that the petitioner raises fundamental issues of governance,

fair administrative action and compliance with the Constitution which should be heard before the petitioner is subjected to arrest.

4. Mr Ashmosi, on his part, opposed any conservatory orders as the arrest or prosecution of the petitioner is not imminent as the DPP is yet to exercise his constitutional discretion and authority to consider the matter. He submitted that a conservatory order would amount to restraining the DPP from fulfilling his constitutional mandate.
5. I have considered the matters in issue and in particular it concerns the letter dated 22<sup>nd</sup> April 2014 which is a recommendation from the Director of Criminal Investigation to the DPP. Whereas, I have no doubt that the petitioner has arguable grounds to raise at the hearing of the petition, his arrest is not eminent. The DPP has yet to exercise his constitutional mandate to decide whether or not to prosecute the petitioner under **Article 157**. In fact at this stage, I would venture to state that the petitioner may make his representations to the DPP before the he makes a decision one way or another.
6. I am not convinced this is a case where I should issue a conservatory order at this very early stage and I decline to do so.
7. In order to expedite hearing of the petition I direct as follows;
  1. **The respondent shall file and serve the replying affidavit and submissions within the next fourteen days.**
  2. **The petitioners be at liberty to respond thereto within 7 days of service.**
  3. **The petition shall be heard on 4<sup>th</sup> June 2014.**

**DATED and DELIVERED at NAIROBI this 5<sup>th</sup> day of May 2014.**

**D.S. MAJANJA**

**JUDGE**

Dr Khaminwa instructed by Khaminwa and Khaminwa Advocates for the petitioner.

Mr Ashimosi, State Counsel, instructed by the Directorate of Public Prosecutions for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents.

Mr Kuria, Litigation Counsel, instructed by the State Law Office for the 4<sup>th</sup> respondent.