



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JR CASE NO 167 OF 2013

REPUBLIC.....APPLICANT

VERSUS

DIRECTOR, CRIMINAL

INVESTIGATIONS DEPARTMENT.....1ST RESPONDENT

INSPECTOR GENERAL OF POLICE.....2ND RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS.....3RD RESPONDENT

EX-PARTE

KUNTAI LESHAN

JUDGEMENT

Kuntai Leshan (the ex-parte applicant) through the notice of motion application dated 24th May, 2013 seeks orders as follows:

1. THAT orders of prohibition do issue prohibiting the Respondents whether acting by themselves, their officers, agents, employees and whosoever from arresting, harassing, torturing, threatening and charging the Applicant on matters relating hereto.

2. THAT the costs of this application be provided for.

The application is supported by the chamber summons application for leave, the statutory statement and the applicant's verifying affidavit all dated 16th May, 2013.

As per the statutory statement, the grounds upon which the relief is sought are:

- 1. The Applicant is being constantly harassed and hounded by the Respondents' Police Officers over matters that are alien to him to wit the said Police Officers have even arrested him and continually call him in the wee hours of the night threatening him with criminal prosecution unless he complies with some illusory demands.**
- 2. As such, the Applicant continues to suffer immense anxiety and mental anguish.**
- 3. Notably, the Applicant is ready and willing to cooperate with the Respondents on any matter**

- but their constant calls, harassment and threats smack of impropriety, malfeasance, arbitrariness, impunity, illegality, unreasonableness, irrationality and unconstitutionality.
4. **In the premises, the Applicant is apprehensive that unless this Honourable Court lends its potent intervention, the Applicant stands to suffer serious prejudice and travesty of justice.**
 5. **Moreover the Applicant stands to be victim of a sham criminal process against his constitutional right to a fair administrative process.**
 6. **The Respondents are under a peremptory obligation to protect the rights of the Applicant against harassment, torture of all manner and forms as well as criminal charges that are malicious, untoward, ill founded, irregular and utterly unjust but have hopelessly failed in doing so and on the contrary are the protagonists of perpetuating human rights violations against the Applicant**

The applicant's verifying affidavit reiterates the said grounds. I will revert back to the applicant's case in due course.

The Director of Criminal Investigations Department, Inspector General of Police and the Director of Public Prosecutions are the 1st, 2nd and 3rd respondents respectively. They have opposed the application through grounds of opposition dated 11th June, 2013. Those grounds are:

1. **The prayers sought by the Petition are unconstitutional as they seek to prevent the 3rd respondent from exercising its mandate as provided under Article 157 of the Constitution. The prayers if granted would result to a greater injustice in the criminal justice system and public interest.**
2. **Under Article 157 (10) of the Constitution and Section 6 of the office of the Director of Public Prosecution Act (2013) the 3rd Respondent does not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of the powers or functions, shall not be under the direction or control of any person or authority.**
3. **Section 24 of the National Police Service Act mandates the police to investigate and determine whether a criminal offence has been committed.**
4. **Section 52(1) of the National Police Service Act gives power to a police officer to summon any person whom the police has reason to believe has information which may assist in the investigations of an alleged offence.**
5. **The applicant has no factual or legal basis for the prayers sought as he has not adduced any evidence to show that criminal proceedings, if any, are mounted for an ulterior purpose.**
6. **It is in the public interest that complaints made to the police are investigated and the perpetrators of crimes are charged and prosecuted.**
7. **The application is incompetent, premature and an abuse of court's process.**
8. **The petition is without merit and should be dismissed with costs to the Respondents.**

The advocates for the parties filed submissions in support of their positions.

Is the applicant deserving of the orders sought? The 1st and 2nd respondents are empowered by Section 24 of the National Police Service Act to investigate any alleged offence. Under Article 157 of the Constitution the 3rd Respondent is given prosecutorial authority. Those powers must be exercised within the confines of the Constitution and the laws of the land. Where those powers are exercised unconstitutionally and unlawfully, this Court is mandated to quash and or prohibit such prosecution.

The application before me is full of generalities but short on particulars. The applicant states he has been harassed and threatened by the police without giving the particulars of the threats. He claims that he is being threatened with prosecution for undisclosed offences. In this country, a person can only be taken to Court for committing offences found in the law. There is no verifiable evidence of the imminent arrest and or prosecution of the applicant.

A close scrutiny of the application before this Court shows that the applicant is seeking blanket protection. He does not want the respondents to exercise their constitutional and legal powers against

him. Such an application cannot be allowed. The respondents cannot be stopped from exercising their legal mandate.

For the reasons stated the applicant's application fails and the same is dismissed with costs to the respondents.

Dated, signed and delivered at Nairobi this 16th day of May, 2014

W. KORIR,

JUDGE OF THE HIGH COURT