



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
MISC. CRIMINAL APPLICATION NO. 43 OF 2012

IN THE MATTER OF HEZRON ODHIAMBO ABOK
PETITIONER

AND

IN THE MATTER OF THE BILL OF RIGHTS IN THE CONSTITUTION OF KENYA

AND

**IN THE MATTER OF THE ADVOCATES ACT CAP 16 LAWS OF
KENYA**

AND

**IN THE MATTER OF RIGHTS AND FUNDAMENTAL FREEDOM IN THE CONSTITUTION
OF KENYA**

VERSUS

THE ATTORNEY GENERAL, REPUBLIC OF KENYA
RESPONDENT

J U D G M E N T

In his petition dated 7.3.2012 the petitioner seeks the following prayers:

1. *THAT the Divisional Criminal Investigation officer Kakamega North District or any other police officer involved in investigations against the Petitioner touching on Kakamega CMCC No. 31 of 2011 or any other suit filed by the Petitioner be prohibited from preferring any Criminal charges against the Petitioner on the basis that the intended charges are an affront to the Petitioner's Constitutional rights.*
2. *THAT the court be pleased to declare the intended police action against the Petitioner unlawful and a violation of the Petitioner's right and privileges under the law as an Advocate of the High Court of Kenya.*
3. *The Honourable Court do decree that there is nothing criminal in the Petitioner's conduct in filing Kakamega CMCC No. 31 of 2011 or any other suit in the course of discharging his duties as an Advocate.*
4. *This Honourable Court in the circumstances do direct closure of the police investigations against the Petitioner and do end any form of interference or harassment on the Petitioner's legal practice.*

The petitioner filed written submissions while the State did not respond to it and left it to the court. The gist of the petition is that the petitioner is an advocate practicing in Kakamega Town in the name and style of **ABOK ODHIAMBO & COMPANY ADVOCATES**. On the 2012.2010 he was instructed by one **ZACHARIA MWENDA MMASI** to file a civil suit arising from an industrial accident at West Kenya Sugar Company Limited. He referred his client to Dr. Charles Andayi on the same date for a medical report and in February 2011 he filed Kakamega Chief Magistrate Civil Case No. 31 of 2011 against West Kenya Sugar Company Limited. Unknown to him, his client had passed on on the 27.12.2010. The petitioner got to know about his client's death in August 2011 and he proceeded to withdraw from acting in the civil matter before the chief magistrate.

The petitioner contends that the police have been conducting investigations and intend to charge the petitioner with a criminal offence. The doctor who prepared the medical report was also arrested. It is the petitioner's contention that he was doing his normal duties as an advocate and had no criminal intentions. He withdrew from acting when he came to know about his client's death.

From the petition and the record it is established that the petitioner was operating in his normal course of duty as an advocate. It is normal for a civil suit to be filed after receiving instructions from a client. Although the death certificate was not annexed I am satisfied that the deceased passed on after having given instructions to the petitioner. Since the deceased died after the suit had been instituted and the petitioner removed himself from the suit after realizing that his client had passed on, it is therefore clear that there was no criminal intention on the part of the petitioner. I do find that the petition is merited and the proposed criminal charges are uncalled for.

In the end, the petition dated 7.3.2012 is granted as prayed. There shall be no orders as to costs.

Delivered, dated and signed at Kakamega this 9th day of October 2013

SAID J. CHITEMBWE

J U D G E