

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC APPLICATION NO.....OF 2023

IN THE MATTER OF ARTICLES 22 (1), 23 (1)(3), 165(3) OF THE
CONSTITUTION OF KENYA.

AND

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR THE
JUDICIAL REVIEW ORDER OF PROHIBITION AND MANDAMUS.

AND

IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES

AND

IN THE MATTER OF APPLICATION BY:

PHILIP ONYANGO OBAJO:::::::::::APPLICANT

VERSUS

INSPECTOR GENERAL OF POLICE:::::::	1 ST RESPONDENT
OCS KAMKUJI POLICE STATION :::::	2 ND RESPONDENT
DIRECTOR OF PUBLIC PROSECUTIONS :::::	3 RD RESPONDENT
THE KENYA NATIONAL POLICE SERVICE:::::::	4 TH RESPONDENT
ATTORNEY GENERAL :::::	5 TH RESPONDENT

CERTIFICATE OF URGENCY


I, DERRRICK ODHIAMBO, advocate of the High Court of Kenya, practising as such, in Mombasa, do hereby certify the application as urgent based on the following grounds:

- THAT, the Applicant was falsely accused of attempted rape contrary to sections 3 & 4 of the Sexual Offences Act, Laws of Kenya.
- THAT, the accusations were investigated by Kenya Police service which included review of CCTVS and Hotel records where alleged offence occurred and examinations report were all negative and no empirical evidence adduced by alleged victim. The Police and ODPP investigation report absolved the Applicant and no criminal charges were conferred on him further the National Basketball Federation conducted a separate investigation and further absolved the applicant.
- THAT, on the basis of the same allegations he was unfairly terminated from his Job at the Kenya Ports Authority where he served as a Basketball Coach. He has since filed a suit for unfair termination at the Employment and Labour

Relations Court, being **ELRC cause E.094 of 2021; PHILIP ONYANGO OMBAJO VS KENYA PORTS AUTHORITY** being mentioned on **30TH May, 2023** for fixing Judgment date and. **CMCC No. 101 OF 2022: PHILIP ONYANGO OMBAJO -VS- THE NAIROBIAN STANDARD MEDIA GROUP PLC** coming up for hearing on **14th June, 2023**.

4. **THAT**, he has been recently summoned by Kenya police stationed at Kamukunji Police Station who are seeking to arrest him on the basis of the same alleged Incident he was exonerated and no new circumstances have arose.
5. **THAT**, the Applicant is apprehensive that the decision to revive the case is not based on any new evidence but is maliciously intended to scuttle pending Judgment case at the Employment and Labour Relations Court.
6. **THAT** the Employment suit is slated for mention on the **30th day of May 2023**, to which parties are to be issued with a Judgement date, however the Respondent is yet to comply with the court's directions and thus may use the warrants as an excuse to delay justice by arresting the Judgment.
7. **THAT** the application is to challenge the ultra vires decision by the Respondents and protect his freedom as there seems to be an extraneous effort to arrest him and intimidate him.
8. **THAT** unless the order sought are issued the Applicant stand to suffer irreparable harm and prejudice.

DATED at MOMBASA this 29th day of May 2023


DERRICK ODHIAMBO ADVOCATES
ADVOCATES FOR THE APPLICANT

DRAWN & FILED BY:

DERRICK ODHIAMBO ADVOCATES
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MOMBASA

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PHILIP ONYANGO OMBAJO:::APPLICANT
VERSUS

INSPECTOR GENERAL OF POLICE:::::::::::::::::::::::::::::1ST RESPONDENT
OCS KAMKUJI POLICE STATION ::::::::::::::::::::::: 2ND RESPONDENT
DIRECTOR OF PUBLIC PROSECUTIONS ::::::::::::::: 3RD RESPONDENT
THE KENYA NATIONAL POLICE SERVICE::::::::::::: 4TH RESPONDENT
ATTORNEY GENERAL ::::::::::::::::::::::: 5TH RESPONDENT

CHAMBER SUMMONS

(Under Articles 22 (1), 23 (1) (3), 165(3) of the Constitution of Kenya, Order 53 rule 1 of the Civil Procedure Rules)

LET ALL PARTIES CONCERNED attend the Honourable Judge in chambers on the..... day of2023 at 9:00 O'clock in the forenoon or soon thereafter as counsel for the Applicant may be heard on an Application for orders:

1. THAT, this Honorable court be pleased to certify the matter urgent and hear the application ex-parte on priority basis and service of the Application be dispensed with at the first instance.

2. THAT this Honorable court be pleased to grant the Applicant herein leave to file a Judicial Review Claim against the Respondents herein and the leave so granted do operate as stay of proceedings pending hearing and determination of this matter.

3. THAT this Honorable court be pleased to issue temporary orders restraining the Respondents, their servants, agents, junior officers and/or anybody from the continuation of the

malicious investigations against the Applicant pending hearing and determination of this Application.

4. **THAT**, pending the hearing and determination of this Application, this Honourable court be pleased to grant anticipatory bail to the Applicant.
5. **THAT**, the Respondents bear the costs of this suit.

WHICH APPLICATION is based on the following grounds: -

1. **THAT**, the Applicant was employed as a basketball coach with the Kenya Ports Authority from 1st July 2016 to the 7th July 2021.
2. **THAT**, following, false and malicious accusations of attempted rape and indecent assault the Applicant was unfairly terminated from employment.
3. **THAT** the subject of the Unfair termination is still being litigated at the **Mombasa Employment and labor Relations Court being ELRC cause E.094 of 2021; PHILIP ONYANGO OMBAJO VS KENYA PORTS AUTHORITY**. That the matter is being mentioned on 30th May, 2023 for purposes of taking a Judgment date.
4. **THAT** as a result of the false and malicious accusations, the Nairobi Standard Media Group PLC, published a defamatory article against the Applicant, and thoroughly injured his reputation as a member of the society.
5. **THAT** following the publication of the article, the Applicant thereafter instituted a civil suit against the Nairobi Standard Media Group PLC, at the Mombasa Law Courts being Mombasa **CMCC No. 101 OF 2022: PHILIP ONYANGO OMBAJO -VS- THE NAIROBIAN STANDARD MEDIA GROUP PLC** coming up for hearing on 14th June, 2023.
6. **THAT** on the basis of the accusations, the Kenya Police initiated a criminal investigation into the attempted rape allegations which were initiated through Occurrence Book No. 65/09/07/2021 at the Kamunkunji Police Station.
7. **THAT**, the investigations were done by Makadara Police Station officers, PPC Mburu and PCW Emily, who later on presented their findings to the Director of public prosecutions who returned a verdict dated 28th October, 2021 stating that there was no evidence to charge the Applicant herein.

8. **THAT** further to that a parallel investigation was conducted by the regulator Kenya National Basketball Federation disciplinary committee who also subsequently absolved the exparte applicant herein from any guilt vide an investigation report dated 4th October, 2022 wherefore he resumed to his normal sporting activities of employment
9. **THAT** the report of the two officers was supported by the lack of medical evidence upon examination of the alleged victim and any other corroborating evidence which included a cctv evidence or record from the hotel confirming that the Applicant herein was at the *locus in quo*.
10. **THAT** the report was also presented to the Applicant's employers and regulators being the Kenya Basketball Federation and Kenya Ports Authority.
11. **THAT**, following the conclusion of the criminal investigations and the presentation of the police report, the Applicant continued with his life and thereafter instituted suits at the Mombasa Employment and Labour Relations Court and the Mombasa Magistrate's Court.
12. **THAT**, as evidence of his innocence, the Applicant presented the criminal report to the Mombasa Employment and Labour Relations Court thus presenting a prima facie case against his former employers.
13. **THAT** based on the foregoing there is no any change of circumstances or availability of fresh or new evidence nor was the applicant summoned by the police for further investigations to warrant his charges.
14. **THAT**, on 15th May 2023, the Applicant was issued with summons by police officers seeking to charge him with the same crime that they had thoroughly investigated and absolved him of in the year 2021.
15. **THAT** the summons was signed by PCW. Emily, who was one of the authors of the report that was presented to Mombasa Law courts, the Kenya Ports Authority, and the Kenya Basketball Federation.
16. **THAT** PCW. Emily, executed the summons in her official capacity as a Kenyan Police Officer under the authority of the 2nd Respondent whose entity is regulated by the 1st and 4th Respondents thus creating the need to file a Judicial Review Claim.

17. **THAT** the said summons are *ultra vires* because it didn't list the date and/or time that the Applicant was to present itself to the Police Station thus the applicant is apprehensive that the police intend to arrest him in public at his place of work when he list expect with the sole purpose to embarrass him and derail the Judgment at the ELRC court and defamation suit at the Chief Magistrates Court at Mombasa.
18. **THAT**, it is clear that the Police are not only abusing their authority, but are on a mission to violate the Applicant's Constitutional Right to access Justice and obtain a fair hearing.
19. **THAT** the Respondents neither issued him with any reasons and/or evidence to corroborate their decision to re-institute criminal proceedings against the Applicant.
20. **THAT**, the Applicant is apprehensive that his right to freedom and liberty is under threat and he believes that the "new" investigations are malicious.
21. **THAT**, the Applicant is yet to be informed of any new developments that would warrant a reopening of investigations that were closed.
22. **THAT**, there is no new evidence that could overturn the decision not to charge him with a crime and that the summons is ill intentioned to intimidate him.
23. **THAT** the Respondents' decision to reinstitute proceedings against the Applicant threaten the validity of the first report which prejudices the Applicant's chances in defending the aforementioned pending suits.
24. **THAT** the summons served upon the Applicant indicate the Respondents intend to arrest and charge him on the allegations of attempted rape, thus the Applicant prays that the court grants his prayer for anticipatory bail pending the hearing and determination of this Application.
25. **THAT** due to the severity of the matter, the Applicant is yet to serve the Respondents with a statutory demand as the next possible action that the Respondents intend to take is to arrest and charge him as per the rules of the Criminal Procedure Code.
26. **THAT** the re-institution of the summons will injure the Applicant's reputation as it raises questions on the

validity of the allegations brought against him which are false and should therefore be dismissed.

27. **THAT** in the circumstances, it is only fair and just that leave be granted to the Applicant to file a Judicial Review Claim against the Respondents, as their actions not only threaten the Applicant's freedom but also violate his constitutional right to accessing justice.
28. **THAT** unless leave is granted, and the court grants the Applicant Anticipatory Bail, the Respondents' agents and/or employees will continue employing unwarranted methods to harass the Applicant without any cause.
29. **THAT** the Respondents shall not be prejudiced in any manner if the prayers sought herein are granted by this court.
30. **THAT** it is only fair, just, equitable and in the interest of justice for the orders sought herein to be granted as prayed.

WHICH APPLICATION is supported by the Verifying Affidavit of PHILIP ONYANGO OMAJO, the statutory statement and on the aforementioned grounds and other grounds to be adduced during the hearing hereof:

DATED at MOMBASA this 29th day of May 2023

[Signature]
DERRICK ODHIAMBO ADVOCATES
ADVOCATES FOR THE APPLICANT

DRAWN & FILED BY:

DERRICK ODHIAMBO ADVOCATES
ACK CATHEDRAL COMPLEX, 1ST FLOOR,
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TO BE SERVED UPON: -

THE INSPECTOR GENERAL OF POLICE
VIGILANCE HOUSE, HARAMBEE AVENUE
P.O. BOX 44249-00100

NAIROBI

TO BE SERVED UPON: -

THE KENYA NATIONAL POLICE SERVICE COMMISSION
SKYPARK PLAZA, 2ND FLOOR
WESTLANDS
P.O. BOX 47363-00100

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TO BE SERVED UPON: -
DIRECTOR OF PUBLIC PROSECUTIONS
KILIDINI PLAZA, 5TH FLOOR
MOMBASA

TO BE SERVED UPON: -
THE ATTORNEY GENERAL
NATIONAL SECURITY AND SOCIAL FUND BUILDING, 9TH FLOOR
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ATTORNEY GENERAL ::::::::::::::: 5TH RESPONDENT

STATUTORY STATEMENT

(Under Order 53 Rule 1(2) of the Civil Procedure Rules,
2010)

NAME AND DESCRIPTION OF APPLICANT:

1. The Applicant is a male adult of sound mind residing and working for gain in Mombasa County within the Republic of Kenya whose address for the purposes of this Application shall be care of **DERRICK ODHIAMBO ADVOCATES, ACK CATHEDRAL COMPLEX NKRUMAH ROAD, OPP HABIB ZURICH BANK, 1ST FLOOR, P.O. BOX 3332-80100 MOMBASA**

THE NATURE OF RELIEFS SOUGHT:

2. An order of **CERTIORARI**, to remove and bring into this court, for purposes of quashing, the Respondents' decision to reinstitute criminal proceedings against the Applicant on charges of attempted Rape contrary to sections 3&4 of the Sexual Offences Act.
3. An order of **PROHIBITION**, prohibiting the Respondents, their servants, agents, junior officers and/or anybody from

continuation of the malicious investigations against the Applicant.

4. An order of **PROHIBITION**, prohibiting the Respondents, their servants, agents, junior officers and/or anybody from continuation of the malicious investigations, harassment and intimidation against the Applicant.
5. An order of **MANDAMUS** compelling the Respondents to uphold and respect the Applicant's Constitutional Rights and terminate any investigations arising from the attempted Rape allegations.
6. An order for the costs of the proceedings.

GROUND'S UPON WHICH THE RELIEFS ARE SOUGHT

7. **THAT**, the Applicant was employed as a basketball coach with the Kenya Ports Authority from 1st July 2016 to the 7th July 2021.
8. **THAT**, following false and malicious accusations of attempted rape and indecent assault the Applicant was unfairly terminated from employment.
9. **THAT** the subject of the Unfair termination is still being litigated at the **Mombasa Employment and labor Relations Court** being **ELRC cause E.094 of 2021; PHILIP ONYANGO OMBAGO VS KENYA PORTS AUTHORITY**. That the matter is being mentioned on 30th **May, 2023** for purposes of taking a Judgment date.
10. **THAT** as a result of the false and malicious accusations, the Nairobi Standard Media Group PLC, published a defamatory article against the Applicant, and thoroughly injured his reputation as a member of the society.
11. **THAT** following the publication of the article, the Applicant thereafter instituted a civil suit against the Nairobi Standard Media Group PLC, at the Mombasa Law Courts being Mombasa **CMCC No. 101 OF 2022: PHILIP ONYANGO OMBAGO - VS- THE NAIROBIAN STANDARD MEDIA GROUP PLC** coming up for hearing on 14th June, 2023.
12. **THAT** on the basis of the accusations, the Kenya Police initiated a criminal investigation into the rape allegations which were initiated through Occurrence Book **No. 65/09/07/2021 at the Kamunkunji Police Station**.
13. **THAT**, the investigations were done by Makadara Police Station officers, PPC Mburu and PCW Emily, who later on presented


their findings to the Director of public prosecutions who returned a verdict dated **28th October, 2021** stating that there was no evidence to charge the Applicant herein.

14. **THAT** further to that a parallel investigation was conducted by the regulator Kenya National Basketball Federation disciplinary committee who also subsequently absolved the exparte applicant herein from any guilt vide an investigation report dated **4th October, 2022** wherefore he resumed to his normal sporting activities of employment.
15. **THAT** the report of the two officers was supported by the lack of medical evidence upon examination of the alleged victim and any other corroborating evidence which included a cctv evidence or record from the hotel confirming that the Applicant herein was at the *locus in quo*.
16. **THAT** the report was also presented to the Applicant's employers and regulators being the Kenya Ports Authority and the Kenya Basketball Federation.
17. **THAT**, following the conclusion of the criminal investigations and the presentation of the police report, the Applicant continued with his life and thereafter instituted a suit at the Mombasa Employment and Labour Relations Court.
18. **THAT**, as evidence of his innocence, the Applicant presented the criminal report to the Mombasa Employment and Labour Relations Court thus presenting a prima facie case against his former employers.
19. **THAT** based on the foregoing there is no any change of circumstances or availability of fresh or new evidence nor was the Applicant summoned by the police for further investigations to warrant his charges.
20. **THAT**, on **15th May 2023**, the Applicant was issued with summons by police officers seeking to charge him with the same crime that they had thoroughly investigated and absolved him of.
21. **THAT** the summons was signed by PCW. Emily, who was one of the authors of the report that presented to court, the Kenya Ports Authority, and the Kenya Basketball Federation.
22. **THAT** PCW. Emily, executed the summons in her official capacity as a Kenyan Police Officer whose entity is regulated by the 1ST & 3RD Respondents thus creating the need to file a Judicial Review Claim.

23. THAT the said summons are *ultra vires* because it didn't list the date and/or time that the Applicant was to present himself to the Police Station thus the applicant is apprehensive that the police intend to arrest him in public at his place of work when he list expect with the sole purpose to embarrass him and derail the Judgment at the ELRC court and defamation suit at the Chief Magistrates Court at Mombasa.
24. THAT the said summons didn't list the date and/or time that the Applicant was to present himself to the Police Station.
25. THAT, it is clear that the Police are not only abusing their authority, but are on a mission to violate the Applicant's Constitutional Right to access Justice and obtain a fair hearing.
26. THAT the Respondents neither issued him with any reasons and/or evidence to corroborate their decision to re-institute criminal proceedings against the Applicant.
27. THAT, the Applicant is apprehensive that his right to freedom and liberty is under threat and he believes that the "new" investigations are malicious.
28. THAT, the Applicant is yet to be informed of any new developments that would warrant a reopening of investigations that were closed.
29. THAT, there is no new evidence that could overturn the decision not to charge him with a crime and that the summons is ill intentioned to intimidate him.
30. THAT the Respondents' decision to reinstitute proceedings against the Applicant threaten the validity of the first report which prejudices the **Employment and Labour Suit No. E094 of 2021: PHILIP ONYANGO OMBAJO -VS- KENYA PORTS AUTHORITY.**
31. THAT the summons served upon the Applicant indicate the Respondents intend to arrest and charge him on the allegations of attempted rape, thus the next possible action that the Respondents intend to take is to arrest and charge him as per the rules of the Criminal Procedure Code.
32. THAT the re-institution of the summons will injure the Applicant's reputation as it raises questions on the validity of the allegations brought against him which are false and should therefore be dismissed.

33. **THAT** in the circumstances, it is only fair and just that leave be granted to the Applicant to file a Judicial Review Claim against the Respondents, as their actions not only threaten the Applicant's freedom but also violate his constitutional right to accessing justice.
34. **THAT** unless leave is granted, and the court grants the Applicant Anticipatory Bail, the Respondents' agents and/or employees will continue employing unwarranted methods to harass the Applicant without any cause.
35. **THAT** the Respondents shall not be prejudiced if the prayers sought herein are granted by this court.
36. **THAT** it is only fair, just, equitable and in the interest of justice for the orders sought herein to be granted as prayed

DATED at MOMBASA this 29th day of May 2023


DERRICK ODHIAMBO ADVOCATES
ADVOCATES FOR THE APPLICANT

DRAWN & FILED BY:

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ATTORNEY GENERAL :.....: 5TH RESPONDENT

AFFIDAVIT VERIFYING FACTS

I, PHILIP ONYANGO OMAJO, an adult citizen of Kenya, working for gain at Mombasa do hereby solemnly make oath and state as follows:

1. **THAT** I am an adult of sound mind residing at Mombasa County within the Republic of Kenya and the Applicant herein conversant with the facts of this case hence and thus competent to swear this affidavit.
2. **THAT** it is within my knowledge that the 1st Respondent is tasked with the responsibility of commanding and leading the National Police Service as enshrined by Article 245 of the Constitution of Kenya.
3. **THAT** it is within my knowledge that the 2ND Respondent, is an agent of the 4th Respondent and has the mandate to oversee it's police officers and regulate the day to day procedure of the Kamkuji Police Station.
4. **THAT** it is within my knowledge that the 3RD Respondent's mandate is to institute and undertake prosecution of all criminal matters as enshrined by Article 157 of the Constitution of Kenya.

5. **THAT** it is within my knowledge that the 4TH Respondent is tasked with the responsibility of observing due process, and exercise disciplinary control over the Police service as enshrined by Article 246 of the constitution of Kenya.
6. **THAT** it is within my knowledge that the 5th Respondent, is the principal advisor to the government and thus defends all suits brought against the organs of the Government or any state organs as enshrined in Article 156 of the Constitution of Kenya.
7. **THAT** sometimes in July 2021, false and malicious accusations of attempted rape and indecent assault were brought against myself, thus leading to my dismissal as a Kenya Port Authority's basketball coach.
8. **THAT** the subject of the Unfair termination is still being litigated at the Mombasa Employment and labor Relations Court being ELRC cause E.094 of 2021; PHILIP ONYANGO OMBAGO VS KENYA PORTS AUTHORITY. That the matter is being mentioned on 30th May, 2023 for purposes of taking a Judgment date. *(Annexed and marked herein "POO-1" is a copy of the Employment and Labour Relations summons)*
9. **THAT** as a result of the false and malicious accusations, the Nairobi Standard Media Group PLC, published a defamatory article thoroughly injuring my reputation as a member of the society.
10. **THAT** following the publication of the article, the Applicant thereafter instituted a civil suit against the Nairobi Standard Media Group PLC, at the Mombasa Law Courts being Mombasa CMCC No. 101 OF 2022: PHILIP ONYANGO OMBAGO -VS- THE NAIROBIAN STANDARD MEDIA GROUP PLC coming up for hearing on 14th June, 2023. *(Annexed and marked herein "POO-2" is a copy of the court summons)*
11. **THAT** it is within my Knowledge that the Kenya Police initiated a criminal investigation into the rape allegations which were initiated through Occurrence Book No.65/09/07/2021 at the Kamunkunji Police Station.
12. **THAT** further to that a parallel investigation was conducted by the regulator Kenya National Basketball Federation disciplinary committee who also subsequently absolved me from any guilt vide an investigation report dated 4th October, 2022 wherefore he resumed to his normal sporting activities of employment. *(Annexed and marked herein "POO-3" is a copy of the report dated 4th October 2022)*

13. **THAT**, the investigations were done by Makadara Police Station officers, PPC Mburu and PCW Emily, who later on presented their findings stating that there was no evidence to charge me of any wrong doing. (**Annexed and marked herein "POO-4" is a copy of the report dated 28th October 2022**)
14. **THAT** the authors of the investigation being PPC Mburu and PCW Emily, later on presented their findings to the Director of public prosecutions who returned a verdict dated **28th October, 2021** stating that there was no evidence to charge me with any wrong doing.
15. **THAT** the report of the two officers was supported by the lack of medical evidence upon examination of the alleged victim and any other corroborating evidence which included a cctv evidence or record from the hotel confirming that the Applicant herein was at the *locus in quo*.
16. **THAT** the report was also presented to my previous employers and regulators being the Kenya Basketball Federation and Kenya Ports Authority.
17. **THAT** with the aid of the report, the Kenya Basketball Federation, cleared me of the charges and reinstated me as a basketball coach.
18. **THAT**, on **15th May 2023**, I was served with summons by police officer seeking to charge me with the same crime that they had thoroughly investigated and concluded by issuing all the relevant parties with the official reports. (**Annexed and marked herein "POO-5" is a copy of the Summons dated 15th May 2023**)
19. **THAT** the summons was signed by PCW. Emily, who was one of the authors of the report that presented to court, my previous employers, Kenya Ports Authority, and the Kenya Basketball Federation.
20. **THAT** PCW. Emily, executed the summons in her official capacity as a Kenyan Police Officer whose entity is regulated by the 1ST Respondent thus creating the need to file a Judicial Review Claim.
21. **THAT** based on the foregoing there is no any change of circumstances or availability of fresh or new evidence nor was I summoned by the police for further investigations to warrant the said charges.

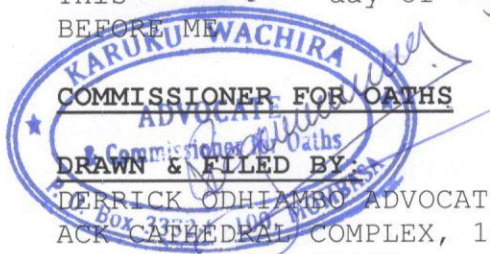
22. THAT the said summons are *ultra vires* because it didn't list the date and/or time that the Applicant was to present itself to the Police Station thus the applicant is apprehensive that the police intend to arrest him in public at his place of work when he list expect with the sole purpose to embarrass him and derail the Judgment at the ELRC court and defamation suit at the Chief Magistrates Court at Mombasa.
23. THAT, it is clear that the Police are not only abusing their authority, but are on a mission to violate my Constitutional Right to access Justice and obtain a fair hearing.
24. THAT during the service, the Respondents neither issued me with any reasons and/or evidence to corroborate its decision to re-institute criminal proceedings of the same nature against me.
25. THAT, I am apprehensive that my right to freedom and liberty is under threat and I whole heartedly believe that the "new" investigations are malicious.
26. THAT, I am yet to be informed of any new developments that would warrant the reopening of investigations that were closed.
27. THAT, there is no new evidence that could overturn the decision not to charge me with a crime and that the summons is ill intentioned to intimidate me and threaten my freedom.
28. THAT the summons served upon me by the Respondents, indicate that they intend to arrest and charge me on the allegations of rape, thus the next possible action that the Respondents intend to take is to arrest and charge me as per the rules of the Criminal Procedure Code.
29. THAT the re-institution of the summons will injure my reputation as it raises questions on the validity of the allegations brought against me which are false and should therefore be dismissed.
30. THAT in the circumstances, it is only fair and just that the court grants me leave to file a Judicial Review Claim against the Respondents, as their actions not only threaten my freedom but also violate my constitutional right to accessing justice.
31. THAT unless leave is granted, and the court allows my prayer for Anticipatory Bail, the Respondents' agents and/or

employees will continue employing unwarranted methods to harass me without any cause.

32. **THAT** the Respondents shall not be prejudiced if the prayers sought herein are granted by this court.
33. **THAT** what is deponed herein is true to the best of my knowledge, information and belief.

SWORN at MOMBASA)
By the said PHILIP ONYANGO OMBEJO)
This 29th day of May 2023)
BEFORE ME)

.....
DEPONENT



DRAWN & FILED BY
DERRICK ODHIAMBO ADVOCATES
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MOMBASA

Summons to Enter Appearance

O.V.r.1



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
ELRC CAUSE NO. E094 OF 2021

This is the exhibit marked P00-1
Referred to in the annexed affidavit statutory
Declaration of PHILIP ONYANGO OMBAJO CIVIL 1B
Sworn / declared before me at Mombasa
this 29th Day of May 2023
Registrar
Commissioner of oaths

PHILIP ONYANGO OMBAJO CLAIMANT

against

KENYA PORTS AUTHORITY RESPONDENT

TO: Kenya Ports Authority
Mombasa

WHEREAS the above-named Claimant has instituted a claim against you upon the claim, the particulars of which are set out in the copy Plaintiff with annexure attached hereto.

YOU ARE HEREBY REQUIRED within ^{21 days} 15 (Fifteen) days from the date of service hereof to enter an appearance in the said suit.

Should you fail to enter an appearance within the time mentioned above, the Plaintiff may proceed with the suit and judgement may be given in your absence.

Given under my hand and the Seal of the Court this 25th day of October 2021

[Signature]
Magistrate/Executive Officer
or Officer appointed under O.I.V. rule 3(2)

IMPORTANT NOTICE

1 You may appear in this by entering an appearance either personally or by a duly appointed advocate at Mombasa. Appearance can be entered by filing with the Court Memo. Of Appearance (forms obtained from Court at 30 cents each) in duplicate, showing the defendant's address for service. A filing fee must accompany such memorandum. A copy of Memo. of Appearance should also be sent to the Plaintiffs or their advocates, if any.

You may enter appearance through the Post by sending the following to the Resident Magistrate (Civil, P. O. Box 90140 - 80100 Mombasa.

- (i) Memorandum of Appearance and a copy.
- (ii) Notice of Appearance and a copy.
- (iii) Two envelopes each sufficiently stamped; one addressed to the Plaintiff or his advocate at the address for service and the other addressed to yourself.

2 If you admit the claim the total sum now due is:-

Sum claimed in the Plaintiff	KShs. SEE
Advocate's cost	KShs. STATEMENT
Court fees	KShs. OF CLAIM
Court collection fee	KShs. _____
Total.....	KShs. _____

3 If payment is made direct to the Plaintiff no Court Collection fee is payable. Cheques cannot be accepted. Remittance must be by coin, bank-notes or postal orders.



REGISTRAR
EMPLOYMENT AND LABOUR
RELATIONS COURT MOMBASA

Summons to Enter Appearance
O.V.r.1

This is the exhibit marked "POD-2".
Referred to in the annexed affidavit statutory
Declaration of PHILIP ONYANGO OMBAJO
Sworn / declared before me at mombasa
this 29th Day of May 2023.

CIVIL 1B



REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S COURT AT MOMBASA
CIVIL SUIT NO. 1011 OF 2022

Signature
Commissioner of Courts

PHILIP ONYANGO OMBAJO.....PLAINTIFF
C/O DERRICK ODHIAMBO ADVOCATES

VERSUS

THE NAIROBIAN STANDARD MEDIA GROUP LTD.....DEFENDANT

TO: THE NAIROBIAN STANDARD MEDIA GROUP LTD
NAIROBI

WHEREAS the above-named Plaintiff has instituted a suit against you upon the claim, the particulars of which are set out in the copy Plaintiff with annexure attached hereto.

YOU ARE HEREBY REQUIRED within 15 (Fifteen) days from the date of service hereof to enter an appearance in the said suit.

Should you fail to enter an appearance within the time mentioned above, the Plaintiff may proceed with the suit and judgement may be given in your absence.

Given under my hand and the Seal of the Court this day of
July 2022

Signature
Chief Magistrate/Executive Officer
or Officer appointed under O.I V, rule 3(2)

EXECUTIVE OFFICE
LAW COURTS MOMBASA

IMPORTANT NOTICE

1 You may appear in this by entering an appearance either personally or by a duly appointed advocate at Mombasa. Appearance can be entered by filing with the Court Memo. Of Appearance (forms are obtainable from Court at 30 cents each) in duplicate, showing the Defendant's address for service. A copy fee must accompany such memorandum. A copy of Memo. of Appearance should also be sent to the Plaintiffs or their advocates, if any.

You may enter appearance through the Post by sending the following to the Resident Magistrate (Civil, P. O. Box 90140 - 80100 Mombasa.

- (i) Memorandum of Appearance and a copy.
- (ii) Notice of Appearance and a copy.
- (iii) Two envelopes each sufficiently stamped; one addressed to the Plaintiff or his advocate at the address for service and the other addressed to yourself.

2 If you admit the claim the total sum now due is:-

Sum claimed in the Plaintiff	KShs. TO BE
Advocate's cost	KShs. ASSESSED
Court fees	KShs. LATER.
Court collection fee	KShs. _____
Total.....	KShs. _____

3 If payment is made direct to the Plaintiff no Court Collection fee is payable.

Cheques cannot be accepted Remittance must be by coin, bank-notes or postal orders



Kenya Basketball Federation

P.O. Box 52107-00200 City Square

NAIROBI

secretarygeneral@kenyabasketballfederation.co.ke

kbexec@yahoo.com

October 4, 2022

MR. PHILIP ONYANGO OMBAJO

Ditto

MR. PHILIP ONYANGO OMBAJO DISCIPLINARY ACTION

This is the exhibit marked "POD-3"
Referred to in the annexed affidavit statutory
Declaration of PHILIP ONYANGO OMBAJO

Sworn / declared before me at Mombasa
this 29th Day of May 2023

[Signature]
Commissioner of Oaths

Vide our letter dated 7th July we appointed an AD HOC COMMITTEE of George Namake [Chairman], Vitalis Gode and Mercine Milimu Isiaho, with the purpose of advising KBF on the alleged sexual misconduct of Mr. Philip Onyango Ombajo.

Following the AD HOC COMMITTEE's Report dated 11th August 2021, we have no further interest in this matter, given the clearance by relevant competent Government authorities.

This Federation lifts the disciplinary action as against MR. PHILIP ONYANGO OMBAJO and he is accordingly restored to the family of Basketball.

Yours in Basketball
For: KENYA BASKETBALL FEDERATION

[Signature]
Paul O. Agali
CHAIRMAN

Kenya Basketball Federation
Nyayo National Stadium Langata Road
P.O. Box 52107
00200 City Square - Nairobi
Kenya

Ccs.

1. KPA
2. NATION MEDIA
3. KAYATIWI

REPORT

To: The Chairman, Kenya Basketball Federation
From: Ad-hoc Advisory Committee
Date: 11th August 2021
Subject: Allegation of Sexual harassment (Attempted rape)
Attachments: Reports of Police & the Director of Public Prosecutions (Makadara) AND Coach's Code of Ethics

1. Background

Kenya Basketball Federation appointed the following persons to the Ad-hoc Advisory Committee George Namake – Chairperson, Vitalis Gode and Mercine Milimu as Committee Members.

This Committee had recommended on 07/07/2021 that Mr. Philip Onyango Ombajo be suspended from basketball and basketball management pending clearance by relevant competent Government authorities in view of Kenya National Police Service Occurrence Book No. 23/07/07/2021 – 0950hrs.

Kenya Basketball Federation requested this Committee to review or otherwise render an opinion on the two letters received from Mr. Philip Onyango Ombajo purporting to be from the Kenya Police on his innocence from the sexual rape attempt case which was at Kamukunji Police station.

There was also a telephone threat of imminent litigation against KBF apropos the disciplinary action from Mr. Ombajo's advocates as informed the undersigned by the Chairman KBF.

2. Committee challenges

The Committee faced the following challenges: -

- a) The said letters were undated
- b) One of the letters was unsigned

- c) The letters were photocopies

3. Committee working methodology

- a. VISIT 1: MAKADARA LAW COURTS: While verbally confirming one of the letters to be theirs, they refused to authenticate them in the absence of the police file.
- b. VISIT 2: KAMUKUNJI POLICE STATION: Cooperation was promised the next day. On Tuesday 10th ditto maximum cooperation was received from the Crime office dealing with criminal sexual matters.
- c. Our Chairman had a very meaningful discussion with the Police Officers thereat (Mr. Emase and Mrs. Emily Odero) and was subsequently given stamped photocopy Reports on the subject at hand. We have attached copies herein below.

4. Observations of the committee

Arising from the aforestated confirmation from the Police and threat of litigation aforesaid, the Committee observes that: -

- a. The case against the said Mr. Ombajo had died for the reasons stated in the documents from the Police, to wit, that the matter had died for want of prosecution.
- b. It is the committee's responsibility to address itself to Mr. Ombajo's disciplinary issue noting that the case had been initiated by this very Committee.
- c. **Sports Cabinet Secretary Amina Mohammed issued a stern warning to those who shall be found to have flouted the new directives.**

"Moving forward anyone implicated in any verified case of harassment, sexual or otherwise, should be excluded from Federation and Team affairs with immediate effect and a report by the concerned Federation/sports organisation be availed to my office.

“Failure to which, the Registrar shall de-gazette the concerned Sports Organisation/Federation.”

5. Reasoned advisory by the committee

- a) Mr. Philip Onyango Ombajo be and is hereby removed from Disciplinary action and be reinstated to basketball activities.
- b) Kenya Basketball Federation to share this report with the Catherine Ndereba Committee
- c) Kenya Basketball Federation do make it mandatory for all officials/coaches to sign an existing Code of Ethics.
- d) KBF should similarly produce a Player's code of conduct.
- e) KBF consider an amendment to its constitution (like football and FIBA) so that all its Commissions are NOT independent but a part of the same KBF, so that it is understood that their fate is KBF'S fate.

Signed

For and on behalf of KBF Ad-hoc Advisory Committee:

G. Namake

11/08/2021

George Namake
Chairperson

Ad-hoc Advisory Committee members:

George Namake - Chairperson

Vitalis Gode

Mercine Milimu

ATTACHMENTS

is prosecution
This file is for perusal and advice
by P.C.W. today

1.0
Upon perusal of the file the following key points
have been noted

- 1) No medical evidence has been availed and further the complainant in her statement has not stated whether she sought medical attention.
- 2) From the complainant's statement, the element of a struggle between her and the accused has not come out very clearly.
- 3) The complainant's version of the story has not been corroborated.

Recommendations

There is insufficient evidence to sustain a charge of attempted rape.

File hereby returned

[Signature]
Srinivasa - P.P.C.
Makadara Law Centre



C/C
1/0

KE: 112/21

COMPLAINANT: Jay Mupalia

ACCUSED: Philip Oyang'o

OFFENCE: Attempted rape

- Reference is made to the above
- The file ~~was~~ has been perused, witness statements analyzed and all contents therein well noted and advised as follows:
- There is insufficient evidence to charge the accused person for the alleged offence on the following grounds:
- ① There is no medical report to show evidence of attempted rape i.e. evidence of bruises or injuries to show struggle.
 - ② There is also no evidence to show struggle like torn clothes.
 - ③ The only available evidence is the complainant's testimony which needs to be corroborated for it to be sufficient.



cl/c
/10

This file

by P.C.W. [unclear]

This is the exhibit marked "PDD-4"

Referred to in the annexed affidavit statutory Declaration of PHILIP OMBAJO ON'YANGO

Sworn/declared before me at Mombasa

this 29th Day of May 2023

[Signature]
Commissioner of Oaths

20 OCT 2023

1.0

Upon perusal of the file the following Key points have been noted

1) No medical evidence has been available further the complainant in her statement not stated whether she sought medical

2) from the complainant's statement, the of a struggle between her and the has not come out very clearly

3) The complainant's version of the S not been corroborated.

Recommendations

There is insufficient evidence to sustain a attempted rape.

File hereby returned

[Signature]
J. Mburugu - [unclear]

REQUISITION TO COMPEL ATTENDANCE

SECTION 52 OF THE NATIONAL POLICE SERVICE ACT, 2011.

I PC/A EMILY ODERA a/a CONSTABLE of police attached to KAMUKUNGI am making inquiries into an alleged offence of ATTEMPTED RAPE (S 4 OF SEXUAL OFFENCES ACT NO. 3 OF 2006 & INDECENT ACT

And have reason to believe that you PHILIP ONYANGO OMBASO

.....have information which will assist me with my investigations.

In exercise of the powers conferred upon me by section 52 of the National Police service Act require you PHILIP ONYANGO OMBASO

.....to attend before me at KAMUKUNGI

Situated at NAIROBI on [date] IMMEDIATELY, 20.....at [time].....a.m/ p.m.

NOTE;-Failure to comply with the above requisition will render you liable to prosecution.

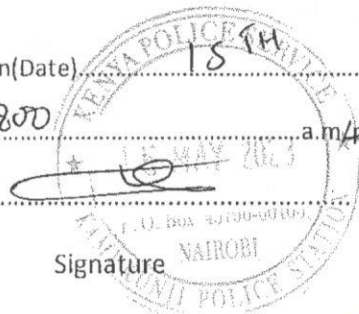
Acknowledgement of service:

I hereby acknowledge receipt of the above requisition on [date].....,20.....at [time].....a.m/p.m

Signature

Endorsement of service;

This requisition was served by PC/A EMILY on (Date) MAY 23 2023 at [time] 0800 a.m/p.m



Signature

GPK 58-100m-1/80

This is the exhibit marked "POD-S" Referred to in the annexed affidavit statutory Declaration of PHILIP ONYANGO OMBASO Sworn / declared before me at mombasa this 24th Day of May 2023 Commissioner of oaths