



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**MISC. APPLICATION NO.E015 OF 2020**

**PATRICK SIGEI.....RESPONDENT/APPLICANT**

**VERSUS**

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

**THE OFFICER COMMANDING**

**STATION RORET POLICE STATION.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Applicant herein **PATRICK SIGEI** filed this Misc. Criminal Application by way of Notice of motion dated 30/11/2020 Application seeking the following orders;

**(i) This application be certified as urgent and service be dispensed with in the first instance.**

**(ii) This Honourable Court pleased to issue a conservatory order restraining the Respondents, their servants, juniors, officers and/or anybody whosever acting under their directions or departments or offices from arresting, harassing or otherwise interfering with the Applicant herein pending the hearing and determination of this application.**

**(iii) This Honourable Court be pleased to grant the Applicant anticipatory bail pending arrest or charge on such terms the Court may deem fit to impose.**

**(iv) THAT costs be provided for.**

2. The Notice of Motion is based on the grounds on the face of it and is supported by the Affidavit of the Applicant of even date in which he has deposed that he is apprehensive that he might be arrested at any time by police officers from **RORET** police station.

3. Further the Applicant has deposed in the said Supporting Affidavit that the events leading to the impending arrest emanate from a land dispute on a parcel of land belonging to his late father and that his step brothers from the first house have been using police to harass him.

4. He further stated that he is ready to present himself to the police upon being granted anticipatory bail pending arrest on such terms as the court deems fit to impose.

5. The parties filed written submissions and the 1<sup>st</sup> Respondent also filed grounds of opposition in response to the Notice of Motion dated 30/11/2020.

6. The Applicant in his written submissions stated through his Advocate that the Application does not offend Article 157(4) and 245(5) of the Constitution as alleged in the Respondent's grounds of opposition as the orders sought do not interfere with the investigations of the case.

7. The Applicant also submitted that the right to bail is provided for under section 49 of the Constitution and Article 244(c) provides that the National Police Service shall;

**“Comply with constitutional standards of human rights and fundamental freedoms”** and further that anticipatory bail is called out when there are circumstances of serious breaches of a citizen's rights by an organ of state as it was held in the case of **W. NJUGUNA v REPUBLIC [2004]KLR**.

8. The Applicant further submitted that he has been receiving threatening messages from the complainant and the police threatening to arrest him and yet no reasons have been given to him for the administrative action as required by Article 47(2) of the Constitution which establishes the right to fair administrative action.

9. The 1<sup>st</sup> Respondent opposed the Application for anticipatory bail and submitted in writing that the Application is frivolous and vexatious and an abuse of the process of the court in that the police are vested with the powers under section 49, 50, 51, 52 and 58 of National Police Service Act prefer charges against anybody that has committed a criminal offence.

10. The 1<sup>st</sup> Respondent further submitted that the police are vested with power under the said provisions of the National Police Service Act to record statements, arrest and prefer charges against anyone found culpable and the orders sought are likely to interfere with the mandate of the police under the National Police Service Act.

11. The 1<sup>st</sup> Respondent also submitted that under section 50 of the National Police Service Act it is the duty of the police to maintain law and order and further that the Applicant is trying to evade the law by seeking unconstitutional orders from this court.

12. The 1<sup>st</sup> Respondent relied on the case of **VOI HIGH COURT Misc. Application No.25 of 2017** in which Justice Kimaru relied on and associated himself with the dicta in the case of **REPUBLIC v CHIEF MAGISTRATE, MILIMANI AND ANOTHER EX PARTE TUSKER MATTRESSES LIMITED & 3 OTHERS** where Justice Odunga held that anticipatory bail ought not be granted to prohibit investigations.

13. The 1<sup>st</sup> Respondent also submitted that the Directors of public prosecutions is conferred with state powers of prosecution under Article 157 of the Constitution and that the Applicant is seeking to take away the constitutional mandate of the DPP contrary to Article 157(10) which states that the ODPP shall not require the consent of any person or authority to commence any criminal proceedings.

14. I have considered the rival submissions filed herein and I find that the issue for determination is whether or not the Applicant is entitled to anticipatory bail.

15. The Application admits that the wrangles in the family though emanating from a family dispute have led to criminal activities which are within the mandate of the police to investigate.

16. I find no evidence that the Applicant's fundamental rights are likely to be infringed and in my opinion the Applicant is seeking to preempt the investigations.

17. I also find that the Applicant is at liberty to seek redress if his fundamental rights are violated.

18. The Application dated 30/11/2020 lacks in merit and the same is dismissed with no orders as to costs.

19. The Applicant is directed petition for letters of administration so that the Estate of their father who is now deceased can be administered in accordance with the Law of Succession Act instead of resorting to criminal acts.

**Delivered, dated and signed at Kericho this 22<sup>nd</sup> day of January 2021.**

**A. N. ONGERI**

**JUDGE**