



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC. CRIMINAL APPLICATION NO. 20 OF 2018

IN THE MATTER OF AN APPLICATION FOR ANTICIPATORY BAIL

AND

IN TH MATTER OF AN APPLICATION UNDER ARTICLES 19, 20, 22, 23, 25, 28, 47(2), 49(1), 165(3), 244(c) AND 259 OF THE CONSTITUTION

ALVIN RICHARD NJIRU.....APPLICANT

VERSUS

INSPECTOR GENERAL OF POLICE.....1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION.....2ND RESPONDENT

R U L I N G

1. This is an application dated 24/05/2018 seeking for orders that the applicant be admitted on anticipatory bail on such reasonable terms and conditions as this court deems fit pending arrest, investigations and/or charges by the respondent.
2. Paragraphs No. 3 and 4 in the application are not prayers but grounds supporting the application. The affidavit of the applicant contains the bulk of the grounds in support of the application.
3. It is stated that the applicant is the manager of Central Ngandori Farmers Co-operative Limited who has served for nine (9) years in the capacity. He states that some members have turned against him and accused him of misappropriating the funds of the society.
4. They have in the past turned rowdy and destructive in meetings called by the applicant on 16/05/2018 and 31/05/2018 to discuss the issues raised.
5. The members have now colluded with police to harass the applicant. The police have rumped up charges against the applicant and have been demanding that he shares money stolen from the Society with them.
6. The constitutional rights as to freedom and protection of the applicant have been breached. The applicant's work place has been invaded by goons with a view of evicting him.
7. The applicant lives in fear of being unlawfully arrested on bogus charges and be locked up.
8. Due to the constant harassment without any charges being preferred against him, the applicant now desires to have his rights protected by being granted anticipatory bail.
9. He states that he is ready and willing to present himself to the police to facilitate investigations.
10. The application was orally opposed by the 2nd respondent. There is no evidence on record to show that the 1st respondent was served.
11. The 2nd respondent represented by Ms. Mate opposed the application on grounds that there was no serious breach by the State organs named. It was further argued that the application has not shown that the applicant's rights have been violated.
12. The 2nd respondent said it had confirmed that the District Criminal Investigator, Manyatta is already investigating the complaints of

financial mis-management lodged with his office from the members of Central Ngandori Co-operative Society Ltd. If the orders sought herein are granted, the 2nd respondent said that the investigations will be adversely affected.

13. The 2nd respondent took issue with the reference to the charges as bogus which in essence pre-empts the investigations.

14. I have perused the application. It has not been denied that there are allegations of misappropriation of funds by the applicant who is the current manager of the Central Ngandori Co-operative Society. That the matter has already been reported to the police and is under investigation is not in dispute. The applicant claims that the police are embarrassing him and demanding part of the root the applicant got from the Society.

15. Although the applicant states that no charges have been preferred against him so far, and also refers to any proposed charges as bogus, this is not for him to judge until investigations are complete. The applicant will be required to help the police in the investigations. He has stated that he is willing to abide with any conditions given including presenting himself to the police.

16. The applicant has said he has moved from his home for fear of arrest and harassment by police. There was no evidence on oath to refute the allegations of harassment by the 1st respondent. The 2nd respondent did not file a replying affidavit but argued the application from the bar. The applicants evidence on oath was not rebutted.

17. I find that the applicant has established that there is a threat of violation of his constitutional rights to freedom and protection. The threat is real in that it has removed the applicant from the comfort of his home. His rights to serve in his job have been violated since he is now in hiding. He has been attacked in the office and eviction attempted.

18. I find that the applicant who is entitled to his fundamental rights to freedom and protection of the law has shown that he deserves the intervention of this court.

19. I find this application merited and allow it as prayed:-

(a) That the applicant is hereby arrested by this court and released on a personal bond of Kshs.50,000/=.

(b) That he presents himself before the DCI Manyatta within three days and thereafter at any other time that he is required by the DCI to assist the police in the on-going investigations.

(c) That each party meets their own costs of this application.

20. It is hereby so ordered.

DATED, DELIVERED AND SIGNED AT EMBU THIS 14TH DAY OF JUNE, 2018.

F. MUCHEMI

JUDGE

In the presence of:-

Ms. Mate for Respondent

Mr. Maina for the Applicant.