



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

MISC. CR. APPL. NO. 399 OF 2018

GRACE OKUKU.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....1ST RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATIONS....2ND RESPONDENT

INSPECTOR GENERAL OF POLICE.....3RD RESPONDENT

HON. ATTORNEY GENERAL GENERAL.....4TH RESPONDENT

RULING

This is an application in which the applicant seeks that she be granted anticipatory bail pending any intended arrest or charge before a Court of Law. It is settled law that anticipatory bail shall only issue where it is demonstrated that there exists threat to the fundamental rights and freedoms of an applicant.

In the present case, the applicant argues that she fears she may be arrested because police have said that every person in her department will be interrogated. The Applicant works with KRA as a documentation officer. It is the submission of her counsel, Mr. Makhoha that every KRA Officer in the Applicant's department has been interrogated. The same has caused a lot of anxiety to the Applicant. It is also submitted that her arrest may occasion her inhuman treatment which is not necessary.

According to the Respondent, and in view of the Replying Affidavit by the investigating officer one Sergeant Felix Karisa Banzi, sworn on 27/7/2018, the investigations began on 3/7/2018. They involve a bulk consignment of Brazilian Brown Sugar that was imported without payment of duty by South Nyanza Sugar Company Ltd.

It is submitted by Ms. Sigei for the Respondent, pursuant to the aforesaid Replying Affidavit that no conclusions or determination has been made as who will be charged. So far, the investigations are at an early state and indeed the Applicant has not been summoned to record a statement for interrogations. There is also so far, no intention of charging her.

Having heard the respective rival submissions, my onerous duty is merely to determine whether the Applicant is entitled to a grant of anticipatory bail.

A perusal of both the application and the Replying Affidavit and buttressed by the submissions attests that only investigations are active at this stage. There is no indication so far that anyone including the Applicant has been found culpable to warrant an arrest or charging in court.

I have said it before that as part of police investigations is the process of interrogating the necessary persons. In the present case, the Applicant as a documentation officer with KRA was involved in the process of the documentation of the sugar consignment. She must therefore be one of the persons who will be interviewed. There is nothing wrong with being interviewed. In fact, annexure "G05" attached to the Supporting Affidavit of the application rubber stamps this fact.

The applicant has alluded that her role did not at all involve validation of the importation of the sugar. She will vindicate herself in her statement. Further statements will also vindicate her, if what she asserts is true.

I conclude that the mere fact of being summoned to record a statement does not constitute a threat to fundamental rights or freedoms. Even an arrest is not a threat to the said rights unless it is demonstrated that the police have abused the process. The Applicant, for the foregoing reasons has failed this test. She has also failed to show that her interrogation will be conducted devoid of a peaceful atmosphere. I say so because, as confirmed, other persons including her colleagues have recorded statements and no harassment has been reported.

In the circumstances, I find that the application lacks merit. The same is dismissed with no orders as to costs.

DATED and DELIVERED this 30th day of **July, 2018**

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. Makhoha for the Applicant.
2. M/s Sigei for the Respondent.