



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

MISC. CRIMINAL CASE NO. 22 OF 2017

GEORGE WARUI KIIGE.....APPLICANT

VERSUS

1. ATTORNEY GENERAL.....1ST RESPONDENT

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

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

RULING

The application pending before court is dated 08/11/2017 seeking for the orders that:-

1. The Honourable Court be pleased to arrest and release the applicant on bond.
2. The Director of Public Prosecution be stopped from bringing further charges against the applicant based on the same set of facts and the same complainant, until all the 4 current cases are concluded.

The applicant was granted anticipatory bail on 09/11/2017 and was released on bond of Kshs.200,000/= and the respondents were restrained from arresting the applicant pending interpartes hearing.

The applicant later abandoned Prayer 2 since it infringed on the powers of the Director of Public Prosecution as granted under the constitution and on 19/04/2018 the anticipatory bail was extended.

Applicant's case

The applicant seeks anticipatory bail on grounds that he is apprehensive that he may be arrested and charged with the same offence based on the same set of facts in many different court jurisdictions. During the hearing, he stated that all the cases have commenced except for the one filed at Karatina have commenced and the threat is still there. In addition, the case at Wang'uru is pending ruling. That all the cases have common witnesses and same exhibits therefore he prays that the bail be further extended for 3 months pending the ruling.

Respondent's case

They objected the extension on grounds that the police are constitutionally mandated to investigate, arrest and prefer charges. That from the pleadings, the applicant committed the offences in Nyeri, Kirinyaga and Embu Counties and may also have committed in other Counties. In addition, the offences were committed on various dates and they cannot consolidate the cases. They prayed that the orders be vacated.

The applicant clarified that the police were not restrained from charging him but restrained from arresting him and to inform him where he was charged. That the applicant is apprehensive of harassment and being charged in many courts.

I have considered the application and the submissions. The applicant brought this application under Article 48, 49 and 50 (2) of the **Constitution** and Section 39,123 and 124 of the **Criminal Procedure Code**. The applicant is stating that he has been arrested and charged in various courts, that is Runyenjes Senior Resident Magistrate's Court, Karaba Mobile Court and others. In all these occasions, the charges were preferred against him and some of the trials has commenced and another is said to be pending ruling.

The reason the appellant came to this court was to get anticipatory bail so that police could not arrest and charge him in different courts and he will not be in a position to raise bail.

The purpose for which the anticipatory bail was granted has been served. The police have followed due process upon investigating the allegations and arraigned the applicant in various courts. My view is that it is the various courts where the applicants has been charged that should deal with the issue of the release of the applicant on bail. The anticipatory bail is supposed to ensure that the rights of the accused are not violated with arbitrary arrests and incarceration. **Article 49(1)(h) of the Constitution** provides:-

“ An arrested person has the right to be released on bond or bail on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released.”

The applicant has deponed that he has been granted bail in the various courts where he has been charged. In the circumstances the anticipatory bail has out lived its purpose as it is granted on an apprehension of an arrest. The applicant has stated that in the cases where he has been charged police have availed witnesses. There is therefore no prove that the police are bent on violating his rights.

The police have a constitutional mandate to investigate offences and prefer charges. **Article 245 (4) of the Constitution refers.** The process of trial starts with allegation being made to the police, investigations, arrest and arraignment in Court. The person is formally charged and bail is considered. There is no reason why the applicant should not go through that process. The state has explained that the applicant is suspected to have committed offences in various parts of the country and at different times making it difficult to consolidate the charges. My view is that what the police are doing is within their mandate.

The applicant has not proved that his rights will be violated. He has submitted that he wants the order for anticipatory bail to be extended as he is likely to be charged with other offences and may not be able to raise bail. This would not be a violation of his right. My view is that where anticipatory bail is granted, once the applicant is formally charged it becomes the business of that court to consider whether to release him on bail and to determine the appropriate bail terms.

I am persuaded by the decision of my brother Justice Mabeya in the case of **Richard Makhanu –v- Republic (2014) Eklr Richard Makhanu –v- Republic (2014) Eklr** where he stated while dismissing an application for anticipatory bail.

With regard to the issue on anticipatory bail, it is usually granted where there is alleged to be serious breaches by a state organ. In the case of W’Njuguna versus Republic, Nairobi Misc. Cr. Case No. 710 of 2002, [2004] 1 KLR 520, the Court held that anticipatory bail can be granted:-

“...when there are circumstances of serious breaches of a citizen’s rights by an organ of the state which is supposed to protect the same.”

In view of the foregoing, while the Applicant has submitted that he is in imminent danger of being arrested, I am not persuaded that the Applicant has demonstrated the likelihood of any serious breach of his rights by the police to warrant the granting of the orders sought. Indeed the Applicant is entitled to equal protection before the law under the Constitution, but the actions of the police in investigating the complaint lodged by the Applicant’s wife is a lawful step, and cannot be said to violate the Applicant’s rights.

The mere fact of him being arrested severally does not amount to any form of harassment but is a core process of investigations of any allegations against him and he has confirmed that in all the cases except the one at Karatina he has already been charged. In my view then, the applicant has not demonstrated that any of his fundamental freedoms and rights has been infringed as to warrant the granting of anticipatory bail.

In conclusion I find that this application is without merit and has been overtaken by events as the applicant has been charged and it is stated that more charges are to be preferred in various parts of the Country. I dismiss the application.

Dated at Kerugoya this 25th Day of October 2018.

L. W. GITARI

JUDGE

Mr. Maina for Applicant.

Mr. Obiri for State.