



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITUI
CRIMINAL MISC. APPLICATION NO. 39 OF 2017
BENARD KILONZI WAMBUA.....APPLICANT
VERSUS
INSPECTOR GENERAL OF POLICE.....1ST RESPONDENT
DIRECTOR OF PUBLIC PROSECUTIONS.....2ND RESPONDENT

R U L I N G

1. **Benard Kilonzo Wambua**, the Applicant approached this Court by way of Notice of Motion seeking bail pending arrest and an order restraining the **OCS Ndolo Police Post** or such other Police Officer from arresting, detaining him for interrogation or in any other way interfering with his freedom till further orders are granted by the Court.

2. The application is premised on grounds that he is a Kenyan and can attend Court or any other place when required so to do and is willing to co-operate with the police too and in their investigations if necessary; That if arrested his fundamental rights to freedom as enshrined in the Constitution shall be violated for no good reason; and that he is a teacher and therefore if arrested his work at school shall be greatly affected and cause great loss as schools are almost closing.

3. The application is supported by an affidavit sworn by the Applicant where he deponed that the **OCS Ndolo Police Station** and his officers have threatened to arrest him under false allegations that he assaulted **Boniface Maithya** jointly with another; That he is apprehensive that the 1st Respondent intends to ambush him with arrest and take him to Court to harass and humiliate him in utter violation of his rights under **Article 28** and **29** of the **Constitution**; and that he is ready to present himself to Court and to pay bail pending arrest.

4. The Respondent relied on an affidavit sworn by the Prosecution Counsel, **Mr. Vincent Mamba** who deponed that the Applicant failed to demonstrate that there was imminent danger of being arrested. That he annexed a copy of a charge sheet on the affidavit which bore the name of another person as the assailant but not the Applicant. That he has not demonstrated how his rights will be infringed therefore his allegations were speculative and his fundamental rights could not be interpreted at variance with those of other citizens.

5. The application was argued orally.

6. **Mr. Daniel Kithome** Learned Counsel for the Applicant submitted that the Applicant has been receiving threats from the **OCS Ndolo Police Post** of being arrested on account of having committed an offence of assault. Threats that are an attempt to infringe his contemplated constitutional rights. That

Police Officers have been following him around an act that has diminished his rights. His freedom of movement and conscience is affected. Hence the prayer for the anticipatory bail.

7. **Mr. Mamba Vincent**, learned Counsel for the Respondents in response submitted that there was no imminent danger and the Applicant has not alluded to how his rights will be infringed. That it was not stated how the **OCS** is trailing the Applicant.

8. In response, **Mr. Kithome** stated that a perception is enough to move the Court to grant anticipatory bail.

9. In the case of **Samuel Muciri W’Njuguna vs. Republic Nairobi High Court Misc. Application No. 710 of 2002, (2004) 1 KLR 520** it was 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.”

10. Police Officers have the power to arrest suspects upon reasonable grounds. The Constitution that protects the rights of an individual also provides for instances where a suspect is arrested and rights of such a person. This perse means that where there are grounds for a person to be arrested it should be done pursuant to the law.

11. The Applicant herein alleges that the **OCS** has threatened to arrest him following false allegations. He has not demonstrated how the threats were made and who the **OCS** is. He has adduced in evidence by way of affidavit a copy of a charge sheet where **Patrick Ngoya Mutunga** was charged with the offence of **Assault Causing Actual Bodily Harm**. The Complainant is indicated as one **Boniface Maithya Munyoki**. According to him it is alleged he was one of the persons who assaulted the individual named in the charge sheet as the Complainant. If the police have good grounds of arresting him then it will not amount to a breach of his rights. What they should be expected to do is to ensure that his rights as provided by **Article 49** of the **Constitution** are complied with.

12. Having considered the application, I find the Applicant having failed to persuade the Court that he is threatened by the police who ought to be protecting him with an arrest following baseless allegations. In the result the application fails which I hereby dismiss.

13. It is so ordered.

Dated, Signed and Delivered at Kitui this 23rd day of August, 2017.

L. N. MUTENDE

JUDGE