

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO. 230 OF 2016

LAWRENCE NDIRANGU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

By Originating Summons brought under Articles 19, 20 and 22 of the Constitution dated 16th June, 2016, the Applicant prays to be granted anticipatory bail or bail pending arrest/or charge on such terms as the court may deem reasonable. The main grounds on which the application is premised are that the police are intending to arrest the Applicant and therefore deny him his liberty, have persistently indicated that they would arrest him without any reason and that the Applicant cannot be arrested for no reason as he is presumed innocent until proven guilty. The application is also supported by the affidavit of the Applicant sworn on 16th June, 2016. The gist of the affidavit is that there were allegations that the Applicant jointly with others committed acts that amounted to conspiracy to defraud and steal from I & M Bank. A complaint was raised with the Police and investigations began. Since the complaint was filed, the Police did not communicate with him in any manner. That on 30th May, 2016, he was informed by close friends that the police were looking for him with the intention of arresting and charging him in court. Unfortunately, no summons was served to him in this respect. He claims that this is blatantly a violation of his constitutional right to freedom and that the police should therefore be restrained from arresting him. He states that he is ready and willing to cooperate with the Police when and if called upon to do so.

Learned State Counsel Ms. Kimiri opposed the application. She submitted that the same is an abuse of the court process as the Applicant did not demonstrate that he had been threatened or arrested by anyone. It was urged the court to note that the police have a duty to conduct investigations on any complaint filed with them.

I have considered the application and submissions and entirely agree with the Learned Counsel for the Respondent that the Applicant has not demonstrated any reason why the application should be allowed. Anticipatory bail shall only issue where the Applicant demonstrates that his constitutional right to freedom has been infringed on or threatened. In the present case, no evidence has been tendered to show that the police have blatantly threatened to arrest the Applicant without a justifiable cause. From the application and brief submission in Court, it is clear that all that the police are doing is to conduct an investigation against a complaint that was filed with them. If the Applicant is one of those persons being investigated, the police have a duty of summoning him to record a statement and if found culpable be arrested and charged accordingly. So far it appears the investigations are not conclusive and there is no indication that the police intend to arrest the Applicant. However, as the Applicant has indicated he is ready to cooperate with the police, I would urge that he could voluntarily present himself to them for any interrogation on the matter under investigation. He has the liberty of being accompanied by his lawyer so as to safeguard against any violation of his constitutional rights. I am certain that the police are alive to the constitutional provision that should they arrest the Applicant, they can only confine him in custody as stipulated under the law.

In the upshot, I find this application without merit, it is vague and an abuse of the court process. The same is hereby dismissed.

DATED AND DELIVERED AT NAIROBI THIS 20TH JULY, 2016.

G. W. NGENYE MACHARIA

JUDGE

In the presence of:

1 Applicant in person.

2. M/s Kimiri for the Respondent.