



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL MISC. APPLICATION CASE NO. 143 OF 2013

IN THE MATTER OF AN APPLICATION FOR ENFORCEMENT OF FUNDAMENTAL RIGHTS UNDER ARTICLES 19, 20, 21, 22, 29, 47 & 50 OF THE CONSTITUTION OF KENYA (2010)

AND

IN THE MATTER OF THREATENED OR IMPENDING BREACH OF THE APPLICANTS FUNDAMENTAL RIGHTS AS ENSHRINED IN ARTICLE 29 OF THE CONSTITUTION

AND

IN THE MATTER OF SECTION 123 OF THE CRIMINAL PROCEDURE CODE CAP 74, THE GENERAL PRINCIPLES OF NATURAL JUSTICE AND THE RULE OF LAW

AND

IN THE MATTER OF AN APPLICATION BY JOSHUA MUTISYA AND ROBINSON NZIOKI NELSON FOR AN ORDER OF ANTICIPATORY BAIL OR BAIL PENDING ARREST AND/OR CHARGE

BETWEEN

1. JOSHUA MUTISYA

2. ROBINSON NZIOKI NELSON APPLICANTS

AND

1. REPUBLIC

2. THE INSPECTOR GENERAL

3. THE D.C.I.O ATHI RIVER POLICE STATION

4. THE ATTORNEY GENERAL RESPONDENTS

RULING

1. The application dated 15/8/2013 seeks the following orders:-

1. **“(Spent).**
2. **THAT the Honourable Court be pleased to grant the 1st and 2nd Applicants anticipatory bail and/or bail before arrest and/or charge in until such time as a formal charge shall be laid against them in a court of law.**
3. **THAT a day be appointed for the Applicants to appear before the DCIO Athi River Police Station with their advocate to the intent (sic) that the police undertake normal procedures without arresting or taking the Applicants to custody.**
4. **THAT IP Jacob Mureithi be restrained from harassing and intimidating the Applicants in respect of arrest and detention.**
5. **THAT the costs of this application be in the cause.”**

2. It is deponed in the affidavit in support that the Applicants have been threatened with arrest and detention by police officers from **Mlolongo Police Station** for unsubstantiated claims of having committed offences. That the Applicants are apprehensive that their constitutional rights are in danger of being violated.
3. The application is opposed. According to the affidavit in reply, the Applicants have been adversely mentioned in the investigations in regard to the complaints made at the police station by **Joseph Muthemba Kamau** and **Peter Muange Kimuyu**. That the Applicants are required at the police station to record statements and for other formalities. It is further averred that the investigations by the police are within the law.
4. The application was heard by way of written submissions which I have duly considered.
5. On 19/8/2013, the Applicants were admitted to anticipatory bail of Kshs.50,000/= each pending the hearing and determination of the application.
6. On the one hand, the Applicants’ fear that their liberty is at stake during this pre-arraignment stage. On the other hand, the police officers are within the law in carrying out the investigations and if an offence is disclosed, charge the Applicants accordingly.
7. To balance the interests of both sides, I make the following orders:-
 - **The orders admitting the Applicants to anticipatory bail until formal charges are laid against them are hereby confirmed.**
 - **The Applicants to appear before the DCIO Athi River Police Station when required to do so to record statements in connection with the intended prosecution.**

Orders accordingly.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 19th day of March 2015.

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B. THURANIRA JADEN

JUDGE