

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC.CRIMINAL APPLICATION NO. 393 OF 2015

GEOFFREY MANYARA MOKUA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The application being for orders for anticipatory bond/bail pending arrest, the litmus test is that the Applicant must demonstrate that his constitutional rights as enshrined in the Bill of Rights have been infringed on or that there is serious threat to breach of his rights if the anticipatory bail is not granted.

In the present case, the Applicant is a police officer attached to Central Police Station. He is under investigations for allegedly shooting dead Dennis Ogwae and Felix Ngwaya Nyangena. He contends that he has been subjected to untold mental torture due to several media publications that he is being investigated. His case is that he was called to attend to a scene where the two deceased persons were randomly shooting. On arrival, an exchange of fire ensued and in the process the two deceased persons were shot dead. His further case is that he has filed a Judicial Review application No. 352 of 2015 before the Judicial Review Division in Nairobi but the same has not yet been heard and determined. In that application, he is also challenging his intended arrest. He further argues that despite the investigations having commenced, he has never been asked to report to any Police Officer for purposes of recording a statement.

Learned counsel M/s Aluda opposed the application. She submitted that the police have a duty to conduct investigations and so far, no conclusion has been arrived at that the Applicant shall be charged with a criminal offence. The police should therefore be allowed to conduct their investigations.

It is important to note that the police are under a duty to conduct any investigations of a criminal nature once a complaint has been lodged with them. The complainant herein cannot be charged until conclusive investigations have been done and the police have concluded that the Applicant should be charged. If that is done, then the police will be at liberty to summon the Applicant for necessary preparation to court. One of the processes for that preparation is in an arrest of a suspect for purposes of, recording a statement, taking of finger prints and photographs. In my view, ordering that the Applicant be not arrested would be to curtail the police from doing their noble job of investigations. Bail pending arrest would only be granted if an Applicant demonstrates that the police have abused their powers while conducting their investigations. So far, that has not been demonstrated. Moreover, the Constitution has put in place safeguards that ensure that if a person is put in custody, he cannot be incarcerated for more than 24 hours before he is arraigned in court. That being the case, since the Applicant has submitted himself to the due process of investigations, he should present himself to any police station when called upon to do so. Should he be incarcerated for a period longer than the Constitution provides, he would be at liberty to seek redress against the perpetrator.

The Applicant, in my view, is also abusing the court process by filing more than one application seeking similar orders. As he has submitted, the reliefs sought in the Judicial Review Application are similar to the ones he seeks in this application. He ought to have awaited the disposal of the Judicial Review

application before exploring other avenues for redress.

In sum, I find that this application is not merited. The Applicant has not demonstrated that his Constitutional Rights have been breached or infringed on or that there is serious threat to breach of his rights to warrant the orders sought. The application is dismissed with no orders of costs.

DATED and **DELIVERED** this 17th day of **November, 2015**.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. *Mr. Osoro h/b for Mrs. Kalundu for the Applicant*
2. *No appearance for the Respondent.*