

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC.CRIMINAL APPLICATION NO. 394 OF 2015

MOSES MUTURI.....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 was an International Financial Controller employed by Harshi Energy Limited in control of Tanzania, Zambia and Congo. During his tenure, there were allegations that he swindled \$ 2 million from the Tanzanian Branch. As a result, his contract was terminated. He has since been living in Kenya. His complaint is that some people who claim to be CID Officers have been following him on claims that they have been sent by his former employer to investigate the loss of the money. They have been asking him to meet in places other than at Police Stations. When he shows up at the appointed venue, the alleged strangers do not show up. He has written letters to his former employer enquiring on whether they are conducting any investigations on the matter but there has not been any response. He has also written several letters to the Director of Criminal Investigations enquiring on the alleged investigations and registered his concern about the strangers but the same have not been responded to. This has caused him a lot of mental anguish as a result of which he prays that he be granted bail pending arrest. He argues that he is ready and willing to cooperate with the police officers when called upon to give any information to them.

Learned state counsel Ms. Aluda opposed the application. She submitted that bail pending arrest cannot be granted based on unsubstantiated allegations. She stated that the persons who are allegedly following the Applicant have not been confirmed to be Police Officers. Furthermore, since the Applicant has conceded that his employment was terminated on allegations of theft, if need be, the police should be given their space to conduct investigations.

I have previously stated that police have a duty and are obligated as their core mandate to conduct investigations of a complaint lodged with them. Although there is no prove in the present case that a complaint has been lodged, the Applicant is not in a position to demonstrate that the persons allegedly following him are police officers. In that regard, he should record a statement with the police if he fears that the persons following him are up to no good. The mere fact of writing a complaint letter cannot suffice. Without any evidence of the allegations leveled against the police, it is difficult for this court to grant him the orders he seeks. He has conceded he was terminated based on allegations of theft against him. If the police are intent on investigating the matter, he should cooperate with them when required to do so. So far, he has not demonstrated that his constitutional rights have been infringed on or that there is serious breach to his rights to warrant the orders he seeks. Moreover, the Constitution has put in place safeguards that ensure that if a person is put in police custody, he cannot be held for more than 24 hours before he is arraigned in court. The arrest of as suspect is part of the process of investigations. If this court were to order that the suspects be not arrested without any justifiable cause, it would set a bad precedent by hampering the police from conducting smooth investigations. That is not the intended purposes for granting bail pending arrest. The Applicant herein has not passed the test required of him in

seeking bail pending arrest. The application has no merit and the same is hereby dismissed with no orders to costs.

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

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

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