



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

MISC CRIMINAL APPLICATION NO. 28 OF 2014

DANIEL KIPRONO KIPTUM.....APPLICANT

VS

O.C.P.D.

D.C.I.O & O.C.S

ELDORET DIVISIONAL

Through

DIRECTOR OF PUBLIC

PROSECUTIONS NORTH RIFT.....RESPONDENTS

(Application for bail pending arrest; principles to be applied; applicant having been summoned at the police station; whether case fit for bail pending arrest; No proof of violation of the applicant's constitutional rights; application dismissed)

RULING

The applicant has moved this court under the provisions of Section 66 and 124 of the Criminal Procedure Code and Article 49(1) (h) of the Constitution. He asks that this court be pleased to grant him bail pending arrest.

It is the case of the applicant that he is one of the administrators of the Estate of Jimmy Choge, his late brother. He was appointed as administrator of the Estate of Jimmy Choge in 2008 but he renounced this position in July 2012. In December 2013, he received a call from the CID Eldoret who wanted him to appear and give information to allegations of forgery to which the applicant has stated he has no knowledge of. He was also informed that he was wanted at the office of the OCPD to answer to questions relating to the estate of his late brother. He has further stated that their father, Simeon Kiptum Choge died on 14 December 2013 and arising from his death, there has been pitted a dispute between the three houses that the late Kiptum had.

It is the contention of the applicant that the office of the OCPD could be acting on unfounded allegations based on malice. He is apprehensive that he may be unfairly arrested and put in custody to answer to questions or allegations that are totally strange to him. He has averred that he is apprehensive that his liberty may be curtailed and his freedoms threatened by the impending arrest. It is for these reasons that he wants bail pending arrest.

I have considered the application and the submissions of Mr. P.K. Komen who appeared for the applicant. For one to be entitled to bail pending arrest, he must demonstrate that his fundamental rights and freedoms are under threat of being breached (See *W'Njuguna v R (2004) KLR 520*) .

In this application, I can see that the applicant has been summoned to the police station to answer to certain questions regarding an investigation that the police are conducting. It is the duty of the police to investigate and part of investigations involves calling forth suspects or witnesses. There is nothing wrong in the police summoning a person to the police station to answer to allegations that he has committed a criminal offence. There is nothing imputed to demonstrate that the police have previously harassed him, or placed him in custody unfairly, so as to call forth the apprehension that the applicant's right to liberty, as provided by the Constitution, are under threat.

For the above reasons, I am not convinced that this is a fit case for bail pending arrest. It behoves upon the applicant to appear at the police station and assist police with investigations. I hereby dismiss this application.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 27TH DAY OF JANUARY 2014

JUSTICE MUNYAO SILA

DUTY JUDGE

HIGH COURT AT ELDORET

Delivered in the presence of:

Mr. P.K. Komen for the applicant.