



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
MISC. CRIMINAL CASE NO. 10 OF 2014

RICHARD MAKHANU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The motion before me is dated 13/03/2014 and seeks various orders including an order that the Applicant be admitted to bail pending arrest and that the OCS, Bungoma Police Office or such other police officer be restrained from arresting, detaining for interrogation or in any other way interfering with the Applicant's freedom till further orders of the court.
2. The grounds upon which the application is premised are set out in the body of the application and the affidavit of Richard Makhanu. These are; that the Applicant is apprehensive of an intended arrest and is seeking the court to stop the police from carrying out investigations on his person; that the police want to arrest him on false allegations that he caused grievous bodily harm on his wife and that the allegations are meant to have him incarcerated to prevent him from conducting his case in BGM Childrens Case No. 1 of 2014.
3. At the hearing of the motion, the Applicant submitted that he should not be arrested because he is a Kenyan and can attend court when required, that he is an orphan and has children under his care and that he should therefore not be incarcerated in police cells unnecessarily.
4. The Respondent filed their grounds of opposition to the application and contended that the application was defective, inept, and ambiguous and amounted to abuse of the process of the court. That the Applicant has not demonstrated that any of his rights were likely to be infringed by the Respondent, should he be arrested.
5. Mr. Kamau, Learned State Counsel submitted that; by asking not to be interrogated the Applicant was attempting to oust Section 52(1) of the National Police Service which allows for investigations; that ground 3 of the application showed that the Applicant only wants to cooperate with the court and not the police. That under Section 24 of the National Police Service Act, the duties of the police includes investigations, prevention and detection of crime.
6. Mr. Kamau further submitted that anticipatory bail is provided for under S 39 of the Criminal Procedure Code. That a magistrate can grant such bail but he is authorised to do so under a warrant of

arrest. That the Applicant is apprehensive that he will be arrested and charged for causing grievous harm contrary to Section 251 of the Penal Code which offence does not require a warrant for one to be arrested. That there is no reasonable apprehension by the Applicant since his arrest was allegedly supposed to be on the 14th day of March 2014 but that day has since passed and nothing has happened. That the application was therefore an attempt by the Applicant not to cooperate with the police in their investigations and that he has not proved any prejudice that he will suffer as a result of the investigations.

7. I have considered the affidavit on record and the submissions of the Applicant and Learned State Counsel. The basis of the application is that the rights of the Applicant will be violated if he is interrogated by the police. This allegation is based on an apprehension of an arrest. From the evidence on record, the police only wanted to interrogate the Applicant on allegations by his wife that he had caused grievous bodily harm on her. Investigations are but part and parcel of our justice system and before charges are preferred on any person, investigations must be carried out on any alleged offence. I think that it will be unfair and highly prejudicial if the police would resort to charging suspects without carrying out investigations. Investigations are but a fundamental step in the justice chain so that people are not charged unnecessarily. The Applicant has not shown why he should avoid this step. He is a citizen of this country and is subject to the laws of the land like any other citizen. I think that interrogation by the police is meant to establish whether there is any evidence to charge a suspect. To my mind therefore, a threat of interrogation is no reason enough to grant bail pending arrest.

8. The Applicant alleges that his rights will be violated. However he has not specified which specific rights will be violated and how. What the police are doing is within their mandate. Section 52 of Cap 84 provides:-

“52. A police officer may, in writing, require any person whom the police officer has reason to believe has information which may assist in the investigation of an alleged offence to attend before him at a police station or police office in the county in which that person resides or for the time being is.”

9. With regard to the issue on anticipatory bail, it is usually granted where there is alleged to be serious breaches by a state organ. In the case of **W’Njuguna versus Republic, Nairobi Misc. Cr. Case No. 710 of 2002, [2004] 1 KLR 520**, the Court held that anticipatory bail can be granted:-

“...when there are circumstances of serious breaches of a citizen’s rights by an organ of the state which is supposed to protect the same.”

10. In view of the foregoing, while the Applicant has submitted that he is in imminent danger of being arrested, I am not persuaded that the Applicant has demonstrated the likelihood of any serious breach of his rights by the police to warrant the granting of the orders sought. Indeed the Applicant is entitled to equal protection before the law under the Constitution, but the actions of the police in investigating the complaint lodged by the Applicant’s wife is a lawful step, and cannot be said to violate the Applicant’s rights.

11. In the premises, I find the application to be without merit and I dismiss the same.

DATED and Delivered at Bungoma this 07th day of April, 2014.

A.MABEYA

JUDGE

