



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

MISC CRIMINAL APPLICATION NO. 26 OF 2014

MOHAMED ALI HUSSEIN.....
.....APPLICANT

VS

REPUBLIC.....1ST
RESPONDENT

INSPECTOR GENERAL OF POLICE..... 2ND
RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATIONS.....3RD
RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS.....4TH
RESPONDENT

RULING.

By a Notice of Motion Application dated 14th August 2014, and brought pursuant to the provisions of Articles 19, 20,21,22,23 28 and 29 of the Constitution of Kenya 2010, and section 123 (1) Part 5 of the Criminal Procedure Code, CAP 75 of the Laws of Kenya, the Inherent Jurisdiction of this Honourable Court and General Principles of Justice and the Rule of Law, the Applicant has inter alia sought the following orders:

- 1. That this Honourable Court be pleased to issue conservatory orders restraining the respondents, their servants, juniors, officers and/or anybody whomsoever acting under their directions or departments or offices from arresting, harassing, torturing and/or otherwise howsoever interfering with the Applicant herein (Mohammed Ali Hussein) pending the hearing and determination of this application.**
- 2. That this Honourable Court be pleased to grant the Applicant an anticipatory bail pending arrest or charge on such terms as the court may deem fit to impose.**

The Applicant's case is that he has been an employee of one Pastor Sharif Ibrahim Farah in respect of the latter's premises on Isiolo Township Block 4/236 for several years and that there have been disputes in respect of the said plot involving the said pastor Sharif Ibrahim and one Abdi Kutu Ali, the County Government of Isiolo and the Isiolo Water Sewerage Company and that in a bid to hurt and/or steal a

match from Pastor Shariff Ibrahim, malicious, false, outrageous, baseless and unlawful allegations have been made up against the applicant on several occasions thereby leading to harassment of, inter alia, the applicant by police officers (i.e. from the C.I.D Department and the regular police) all of whom appear to have been compromised by some powerful and financially influential individuals and that consequently, police officers now intend to maliciously, unlawfully, unreasonably and arbitrarily arrest, torture, harass or/detain the applicant. He contends that the police have harassed him for allegedly owning a firearm.

It was submitted by Mr. Ngunjiri counsel for the Applicant that the Applicants rights and freedoms have been infringed and threatened. Mr. Mungai, counsel for the State, on the other hand contended that the application was based on mere allegations and has no basis and that further the Applicant has admitted having committed an offence i.e. bribery.

I have carefully looked at the Applicant's Application, the supporting affidavit thereof and submissions by Counsel. There is a letter authored by his advocate, addressed to the police on 12.6.2012. In the latter, counsel for the applicant were alleging that the police were harassing the applicant over false allegations made by one Abde Kuntu Ali. He alleges that the police have renewed their harassment in January, 2014.

This is an application for anticipatory bail pending arrest. Anticipatory bail is usually granted where there are serious breaches by a state organ, and from the supporting affidavit it has not been stated how the rights of the applicant under **Articles 19, 20, 21, 22, 23 28 and 29 of the Constitution have been threatened or violated. The Applicant is not a party to the dispute that he has alluded to.** There is no specific provision on grant of anticipatory bail to a person who is in fear of imminent arrest. **Article 49(1) (h) of the Constitution** provides that:

“An arrested person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”

This Article envisages a situation where a person has already been arrested or has been arraigned in court after criminal charges are preferred. In the case of **W'NJUGUNA VERSUS Republic, Nairobi Misc. Cr. Case No. 710 of 2002, [2004] 1 KLR 520**, the court gave circumstances under which anticipatory bail can be given as follows:

“...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. “

Taking all matters in the case before me into consideration, while the Applicant has submitted that he is in imminent danger of being arrested, I am not convinced that the Applicant has demonstrated the presence of a serious breach of his rights by any organ of state which is supposed to protect these rights, to warrant the granting of anticipatory bail. If the applicant is required by police for investigation into allegations of possession of a firearm, he should avail himself to the police for that purpose and should desist from bribing police as he has admitted.

Furthermore, should the police actions as alleged culminate in the arrest of the Applicant, the Applicant shall be entitled to bail as provided for in the Constitution at the earliest opportunity. In any event, arrest and arraignment are known processes of our legal system and per se, do not amount to infringement of the fundamental rights and freedoms of the Applicant. To my mind, the apprehension by the Applicant does not meet the threshold of serious breach of his rights by a state organ.

In the end result, I find this Application to be without merit and the same is dismissed in its entirety. The orders issued on 18th September, 2014 shall be vacated forthwith.

DATED ,SIGNED AND DELIVERED AT MERU THIS 18TH DAY OF DECEMBER, 2014.

R. P. V. WENDOH

JUDGE.

Present

Mr. Musyoka for state

Ms Gituma holding brief for Mr. Nyenyeire for applicant

Kirimi court assistant