



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

Miscellaneous Criminal Application 6 of 2010

**DAVID KIPLAGAT TUM ..... APPLICANT**

**VERSUS**

**DIVISIONAL CRIMINAL INVESTIGATIONS**

**OFFICER (DCIO) ..... 1<sup>ST</sup> RESPONDENT**

**COMMISSIONER OF POLICE ..... 2<sup>ND</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

Before me is an application by way of Chamber Summons brought by the applicant under Section 3 of the Criminal Procedure Code and Section 123 (1) of the Criminal Law Amendment Act 2003 and all the enabling provisions of the law for orders:-

- (1) That this application be certified as urgent and service be dispensed with in the first instance due to reasons of urgency.
- (2) That this honourable Court be inclined to arrest and order the release of the applicant herein DAVID KIPLAGAT TUM pending arrest.
- (3) That costs be provided for.

In support of the application David Kiplagat Tum has sworn an affidavit giving grounds. The application is brought under Section 39 and 123 of the Criminal Procedure Code. These Sections are applicable under the assumption that a cognizable offence has been committed.

Section 39 provides:-

“A Magistrate may at any time arrest or direct the arrest in his presence within the local limits of his jurisdiction of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.”

While Section 123 (1) provides:-

“1” When a person other than a person accused of

murder, treason, robbery with violence, attempted robbery with violence and any related offence is arrested or detained without warrant by any officer in charge of a Police Station, or appears or is brought before a Court and is prepared at any time while in custody of that officer or at any stage of the proceedings before that Court to give bail that person may be admitted to bail.

Provided that the officer or court, instead of taking bail from that person, release him on his executing a bond without sureties for his appearance as provided thereafter in this part.

“3” The High Court may in any case direct that an accused person be admitted to bail or that bail required by a Subordinate Court or police officer be reduced.

There is no provision in our statutes which empowers the High Court to arrest any person and even if there was the Court must satisfy itself that a cognizable offence has been committed before arrest.

All that the applicant is after is anticipatory protection in the event he may be arrested but the Court cannot prevent the police from carrying out their investigations if they have reasonable suspicion that an offence has been committed. The police ought to do their investigations and in case they come to the conclusion that an offence has been committed, the applicant can be arrested and charged.

I order that in the event he is arrested and charged he should be released on police bond if the offence is bailable and to appear in Court on a date as directed by the police.

Those are the orders of this Court.

DATED AND DELIVERED AT ELDORET THIS 11<sup>TH</sup> DAY OF FEBRUARY, 2010.

**J. L. A. OSIEMO**  
**JUDGE**