

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU Criminal Petition 9 of 2009

PETER MUGAMBI NKANATA.... PETITIONER/APPLICANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

An application dated 3rd November 2009 is filed by peter Mugambi Nkanata whereby he seeks from this court under Rule 20 and 21 of the High Court Practice and Procedure Rules for an order of anticipatory bill or bond pending his arrest. When the matter was brought under certificate of urgency, this court by an order of 3rd November 2009 granted the applicant anticipatory bond. The matter was heard *inter partes* on 18th March 2010. The applicant by his affidavit in support of the application deponed that Subuiga Police Station officers had threatened his family with arbitrary arrest, torture and confinement. He deponed that his son and daughter-in-law had been kept in confinement since 17th October 2009. He stated that the police officers had personally threatened him with arrest and confinement from when he begun to question the illegal action against his family. He further stated that his photograph had been advertised in the news paper as a wanted man. The OCS of Subuiga Police Station gave oral evidence in response to that application. He begun by saying that he did not know the applicant personally but only knew him by name. He responded by saying that the police had been searching for him in relation to a break-in that occurred at Kisima Farm. Kisima Farm is Located in Buuri District. They investigated the offence of that breaking in and arrested the applicant's son at his home. His son lives in the same compound with the applicant although in different houses. Police, on arresting the son, later got information that the money that had been stolen was within the homestead of the applicant. On rushing back to that homestead they did not find the applicant. Investigations were commenced and took place at several places even at Isiolo. On receiving further information, police went to Nairobi. In all those places, however, they were unable to trace the applicant. The Kisima Farm which was the complainant in the case paid for the advertisement in the news paper putting the applicant photograph. The OCS indicated that the investigations were now over and if they were to arrest the applicant, he would be taken to court within 24 hours. The police are mandated by Section 14 of the Police Act to do the following:-

“14. (1) The Force shall be employed in Kenya for the maintenance of law and order, the preservation of peace, the protection of life and property, the prevention and detection of crime, the apprehension of offenders, and the enforcement of all laws and regulations with which it is charged.”

It is clear from that Section that one of the responsibilities of Police Officers is to investigate and obviously charge anybody suspected to be involved in any criminal act. That being so, and considering the explanation given by the OCS of Subuiga Police Station, I am of the view that there is no basis to continue to uphold the anticipatory bond of the applicant. For that reason, the Chamber Summons dated 3rd November 2009 is hereby dismissed and the order issued by this court on 4th November 2009 granting the applicant anticipatory bond is hereby vacated.

Dated and delivered at Meru this 19th day of March 2010.

MARY KASANGO
JUDGE