



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Petition 534 of 2008**

**IN THE MATTER OF SECTION 84 (1) OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS  
AND FREEDOM UNDER SECTION 70, 72 AND 76 OF THE CONSTITUTION OF**

**KENYA**

**BETWEEN**

**COSMOS NJORORO MURITHII ..... PETITIONER**

**AND**

**THE REPUBLIC OF KENYA..... RESPONDENT**

**JUDGMENT**

Cosmus Njororo Murithi, filed this petition dated 29/8/08 under S 84 (1) of the Constitution alleging breach of his fundamental rights under section 70, 72 and 76 of the Constitution. It is the Petitioner's contention that he is apprehensive of his being arrested following a complaint made to Kayole Police Station by Rosemary Wanjiru Wanjuki over a share capital of Kshs.200,000/= allegedly paid by the said Rosemary Wanjiru. He is apprehensive that his liberty and security of person will be interfered with if arrested. The Applicant therefore seeks the following orders;

- (i) That the court do declare that the Applicant's fundamental rights and freedom of the individual under Ss 70, 72 and 76 of the Constitution have been infringed by the Respondent;
- (ii) That the court do grant the Applicant anticipatory bail or bail pending arrest within the parameters of S 84 (1) of the Constitution;
- (iii) Costs of the petition.

The Applicant deposed that the said complainant, Rosemary Wanjiru Wanjuki and the Petitioner are shareholders in a company and that the said Rosemary should have filed a civil suit if she wants a refund instead of complaining to police. That the report made to Kayole Police Station amounts to harassment and he fears that he may be arrested for the said complaint.

The petition is opposed and Ronald Chemosit swore an affidavit dated 7/10/09 in which he deposes that he is the investigating officer in the complaint made by Rosemary Wanjiru Wanjuki. He denied that the Respondent is about to violate the Petitioner's rights to liberty and that the Petitioner's apprehension is not based on any facts. That his prayer for anticipatory bail can not be granted because the same was denied on 8/10/08 when the court denied his application for anticipatory bail. Mr Obiri, Counsel for the Respondent submitted that J. Dulu dismissed the applicant's application for anticipatory bail and the Petitioner has preferred an appeal against the ruling it and the same can not be revisited. Counsel urged that this application is an abuse of the court process.

An application for anticipatory bail pending arrest is meant to preserve the liberty of the Applicant so that he is not arrested or his liberty interfered with pending the determination or the hearing of this petition. When the Applicant first approached the court, he sought anticipatory bail before J. Dulu who after hearing the parties declined to grant the prayer for reasons that the Applicant had not demonstrated that the Respondent intended to violate his rights but that all that the Respondents intended to do was investigate the complaint made by Rosemary Wanjiru. Mr. Obiri said that there is an appeal against the order of J. Dulu. The Petitioner did not deny the existence of an appeal. This court can not therefore revisit the issue of bail when the matter is already before the Court of Appeal.

The Applicant alleges breach of his rights secured under Ss 70, 72 and 76. It is trite law that an Applicant moving the court under the Constitutional Provisions should plead specifically what he complains of, the nature and extent of the infringement, the section, subsection or even paragraph allegedly infringed and that enables the Respondent be able to reply. In ***ANARITA KARIMI NJERU V. REPUBLIC 1979 KLR EA 154 at pg. 159***, Trevelyan and Hancox said;

***“We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are infringed.”***

The Petitioner failed to specifically plead what the nature of his complaint is or what specific subsections are infringed. In fact from a reading of the affidavit, it is not clear what the complaint to the police is. He alleges how they had a company with Rosemary and that the company is a legal person to sue and be sued and that is the legal person who should sue. There is no evidence of the existence of the said company. A certificate from Registrar of Companies would have been good evidence of the existence of the company and the shareholding. This court finds no substance in the petition. In fact from the pleadings it is evident that the Petitioner does not know what he wants. Either his rights have been infringed or he is apprehensive that they will be infringed. There is no evidence of imminent arrest or threats. Apart from the petition having been considered before and a ruling delivered by J. Dulu, I find that the petition lacks substance, it is really an abuse of the court process and it is dismissed with costs to the Respondent.

Dated and delivered at Nairobi this 16<sup>th</sup> day of November 2009.

**R.P.V. WENDOH**

**JUDGE**

**Presence of:**

No appearance for Petitioner

Mr. Obiri for Respondent

Court clerk - Muturi