



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO. 365 OF 2007

IN THE MATTER OF HON. WILLIAM KABOGO GITAU

HON. WILLIAM KABOGO GITAU.....APPLICANT

VERSUS

REPUBLIC OF KENYA.....RESPONDENT

RULING

The Originating Motion of 25.5.2007 came up before me at an ex parte stage, under certificate of urgency, on that same date.

Its purpose was to secure for the applicant anticipatory bail. The applicant had not wanted to challenge any police initiatives in the investigation of crime, even if this involved interviewing him, or even laying charges against him.

But the applicant had a fear for his own safety, because the police never pursued any public, official, or recognized legal process of interviewing him or, indeed, even of notifying him and summoning him to attend at their offices.

The applicant only heard through rumours, as well as through media reports, that the police were following in his trail. He feared for his safety, because he did not perceive that that was the official or the lawful procedure of police investigations.

The application was supported by an affidavit which described the set of facts which had led the applicant to have such fear.

The press reports gave the impression that the applicant was likely to be arrested in connection with the unlawful activities of a grouping known as Mungiki. Since this Mungiki phenomenon is now generally recognized as a threat to national security – and this Court takes judicial notice of that fact – the appellant feared that if the police arrested him in such a cloud, they would be tempted to handle his matter purely informally, and not in accordance with the law that regulates police investigations. He feared that the police would compromise his liberty by detaining him for prolonged periods, outside the safety measures provided by law, and enforced by the judicial process.

I think those circumstances give objective cause for the applicant's fears. And those circumstances provide a good basis for the applicant to come to Court at this preliminary stage.

I note with satisfaction, that learned State Counsel Mr. Makura has acknowledged the legal position stated by learned counsel for the applicant, Mr. Orengo : that in the circumstances, this court has the jurisdiction to grant the applicant anticipatory bail.

At the end of this *inter partes* hearing of the application, I will now make orders as follows, in place of the interim orders which I had made on 25.5.2007:

1. The applicant is hereby granted anticipatory bail and if he shall be arrested at any time in respect of the matters contemplated, and charged with a bailable offence, he shall enjoy this bail at all times, subject to such orders as the Court may make.
2. The applicant is admitted to a personal bond of Kenya Shillings 100,000/= which he shall execute if it has not already be executed.
3. There shall be a surety for the sum of Kshs.100,000/=:, which sum has already been deposited in Court.
4. The applicant shall present himself at the CID Headquarters on Thursday 31.5.2007 at 9.00 a.m. – for the purpose of recording any statement or in any other manner helping the police with investigations, and for this purpose he may appear with his advocates.

Orders accordingly.

J.B. OJWANG

JUDGE

29.5.2007