



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

**Misc Crim Appli 45 of 2007**

**IN THE MATTER OF: AN APPLICATION FOR BAIL PENDING ARREST (ANTICIPATORY)  
UNDER THE**

**COURT'S INHERENT ORIGINAL JURISDICTION**

**AND**

**IN THE MATTER OF: SECTION 3(3) OF THE CRIMINAL PROCEDURE CODE, CHAPTER  
75, LAWS**

**OF KENYA**

**AND**

**IN THE MATTER OF: COMMON LAW AND ALL OTHER ENABLING PROVISIONS OF  
LAW**

**BETWEEN**

**ASHOK LABSHANKER DOSHI**

**AMIT ASHOK DOSHI .....APPLICANTS**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**R U L I N G**

By a Summons dated 9<sup>th</sup> July 2007, Ashok Labshanker Doshi and Amit Ashok Doshi hereinafter referred as the applicants, beseeched this court to grant them bail before arrest. The summons is supported by the affidavit of Ashok Labshanker Doshi sworn on the 9<sup>th</sup> day of July 2007. The duo are directors and shareholders in Doshi Ironmongers Ltd.

The facts leading to the filing of this summons can easily be deduced from the facts deposed in the affidavit of Ashok Labshanker Doshi. It is the applicants' assertion that Kenya Revenue Authority through its Deputy Commissioner wrote to the applicants in the month of March 2007 informing them that the authority had carried out a thorough audit of M/s Doshi Iron Mongers Ltd. and acknowledged that the company had paid all the taxes for the year 2003. However in the month of April 2007, Kenya Revenue Authority officers in conjunction with the police raided the company's premises where upon they carried away computers, files, documents and softwares without making any inventory of what they carried away. In the month of May Kenya Revenue Authority made a demand to the applicant's company to remit taxes to it in the sum of Kshs.124,720,037/-. Thereafter Kenya Revenue Authority and the applicants exchanged various correspondences over the outstanding taxes. In the end, the applicants lodged an objection against the Kenya Revenue Authority's assessment of the outstanding tax pursuant to the provisions of the Income Tax Act Cap.470 Laws of Kenya. There is evidence that Kenya Revenue Authority made threats to the applicants to institute criminal charges against the applicants and their company if they did not remit the taxes as demanded.

The real threat from Kenya Revenue Authority was sensed when the police issued a notice against the applicants pursuant to Section 22 of the Police Act to compel them to attend at the police station to record statements for alleged offences of forgery. It is the applicants fear that they may be arrested and placed in police custody in the process, hence they have come to court to seek for what is popularly known as anticipatory bail.

I have considered the grounds set out in the summons and the facts deponed in the affidavit of Ashok Labshanker Doshi. I have also taken into account the oral submissions made by Mr. Khanna, learned advocate for the applicants. The applicants are seeking for the protection of their liberties as guaranteed by the constitution. The offence disclosed by the summons issued by the police under S.22 of the Police Act is that of forgery. Such an offence is bailable in law. The applicants do not want to be kept in police custody but they are at the same time ready to honour the police summonses by submitting themselves to the police. I am convinced the application has merit and is available in our jurisprudence. I allow the application. Let the applicants bind themselves by signing personal bonds of Kshs.1,000,000/- each before the Deputy Registrar of this court. This order however does not bar the police from summoning them to the police station to record statements or for interrogation. The police should not place them in custody in view of the above orders.

Dated and delivered at Mombasa this 11<sup>th</sup> day of July 2007.

J. K. SERGON

J U D G E