



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**(CORAM: OJWANG, J.)**

**MISC. CRIMINAL APPLICATION NO. 706 OF 2007**

**IN THE MATTER OF AN APPLICATION FOR ENFORCEMENT OF FUNDAMENTAL RIGHTS UNDER SECTION 84(1) AND (6) OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF AN APPLICATION BY JAMES MAINA WANJOHI FOR AN ORDER OF ANTICIPATORY BAIL OR BAIL PENDING ARREST AND/OR CHARGE**

**AND**

**IN THE MATTER OF THE JUDICATURE ACT CAP. 8, RULE 3(1) & (2) THE CONSTITUTION OF KENYA SECTIONS 70, S.60, 72, 77, 76 & 123(8), THE CRIMINAL PROCEDURE CODE CAP. 75 SECTIONS 123(1), GENERAL PRINCIPLES OF NATURAL JUSTICE AND THE RULE OF LAW**

**BETWEEN**

**JAMES MAINA WANJOHI.....APPLICANT**

**-AND-**

**REPUBLIC.....1<sup>ST</sup> RESPONDENT**

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

**DIRECTOR OF C.I.D. ....3<sup>RD</sup> RESPONDENT**

**RULING**

The applicant comes before the Court by his Notice of Motion dated 5<sup>th</sup> October, 2007. He seeks anticipatory bail. He is a businessman whose business is now interrupted, and his home-life disrupted because he has had to be on the move all the time. He keeps re-locating because he is receiving threats, some of which claim to be emanating from Police officers, and these also attribute to him criminal acts, which he believes he has not committed.

Learned counsel *Mr. Macharia* has represented to this Court, that the applicant will not attempt to escape

the due process of Police investigations into his affairs; indeed, the applicant is quite prepared to be properly investigated and even charged in Court, if need be. But he is asking this Court to give him safe conditions in which he can report before a known Police Station, openly and without threats; for the purpose of recording statements as may be required; and even for the purpose of being charged.

The safety cover sought at this stage, by the applicant, is in the form of an anticipatory bail – to cover him until he is, if need be, charged in Court, whereupon the Court in question would ensure his freedom by appropriate bail orders.

From the facts deponed in the applicant's affidavit, it is clear to this Court that the prayers in the application are by no means unreasonable.

I will make orders as follows:

- 1. The applicant is hereby granted anticipatory bail, and he will enjoy this bail until such time as a formal charge shall have been laid against him in a Court of law, from which moment the trial Court shall make any orders as to bail as may be deemed appropriate.*
- 2. The applicant shall meet the bail terms by paying into the High Court cash office the sum of Kshs.Eight Thousand (8,000/=).*
- 3. On 6<sup>th</sup> November, 2007 at 9.30 a.m., the applicant shall report to the OCS, Central Police Station, Nairobi for the purpose of recording any statement such as may be required by the OCS, in connection with any intended prosecution against the applicant; and in this respect the applicant may be accompanied by his advocate.*

**Orders accordingly.**

**DATED and DELIVERED at Nairobi this 30th day of October, 2007.**

**J.B. OJWANG**

**JUDGE**

**Coram: Ojwang, J.**

**Court Clerk: Mr. Huka**

**For the Applicant: Mr. Macharia**

**For the Respondent: Mr. Makura**