



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

(CORAM: OJWANG, J.)

MISC. CRIMINAL APPLICATION NO.668 OF 2007

**IN THE MATTER OF AN APPLICATION BY RAVINDER SINGH FOR AN ORDER OF
ANTICIPATORY BAIL OR BOND BEFORE ARREST AND/OR CHARGE**

**IN THE MATTER OF THE CONSTITUTION OF KENYA THE CRIMINAL PROCEDURE
CODE, CHAPTERS 75 OF THE LAWS OF KENYA THE PRINCIPLES OF NATURAL
JUSTICE AND THE RULE OF LAW**

RAVINDER SINGH.....APPLICANT

-VERSUS-

ATTORNEY-GENERAL.....1ST RESPONDENT

THE COMMISSIONER OF POLICE.....2ND RESPONDENT

RULING

Section 123(3) of the Criminal Procedure Code (Cap.75) provides as follows:

“The High Court may in any case direct that an accused person be admitted to bail or that bail required by a subordinate Court or Police officer be reduced.”

The applicant has come before this Court by Notice of Motion dated 19th September, 2007 citing the Criminal Procedure Code (Cap.75) as the basis of his application; and it is clear that the pertinent provision of the Code is the one quoted above.

So, *ex facie*, there will be no doubt that the application is a criminal application, brought before a criminal Court, and the applicant is a person who apprehends that he will be brought before the Magistrate’s Court as an accused person. So, the applicant is concerned with the period leading up to the process in a Magistrate’s Court, in a criminal case; he is asking that the said interim period be protected by this Court, so that his rights are secured pending any charges that may be brought against him. He asks for a bail arrangement, to ensure Police compliance with the law protecting his rights during investigations, before the charge is laid in Court. It is to be understood that the applicant appreciates that, from the moment he is charged in Court, that Court will apply regular process of law, to protect him pending trial.

In the run-up to the laying of any charges against the applicant, he apprehends that the Police will infringe

his rights guaranteed by the Constitution.

I have earlier on made a ruling in this case, in which I have held that all Judges of the High Court continually deal with issues of rights which are protected under the Constitution, even when the main dispute immediately before them is in contract, environment, property, probate, tort or any other area of law whatsoever.

From the background given above, it is evident to me that the applicant's application is truly a criminal-case application, lawfully and correctly brought before this Court, and I am to deal with it on that basis, and to resolve any constitutional issues involved in that framework of dispute settlement.

I, therefore, reaffirm my earlier ruling, that the objection raised by learned State Counsel **Ms. Gakobo**, founded on the claim that there was a failure by the applicant to use the regulations in Legal Notice No. 6 of 2006, is refused.

Why does the applicant ask for anticipatory bail? Because he believes that the complainant, who primarily has civil grievances against fellow landlords, is endeavouring to take advantage of his colleagues, by using the Police to adopt his own expectations and to apply the criminal process against him (the applicant) in an abusive and a harassing manner.

Copious documentation has been attached to the application, showing unanswerably, that the complainant may be using the Police for the wrong purpose – the purpose of winning civil claims at the expense of fellow landlords.

Ex facie, therefore, this Court perceives that the Police must be held to the law – even as the Court allows them to conduct any genuine criminal investigations according to law.

I will, therefore, grant the applicant anticipatory bail, and specifically order as follows:

- 1. I hereby grant the applicant anticipatory bail, in the sum of Kshs. Six Thousand (6,000/=) which shall be paid into the High Court's cash office.***
- 2. The applicant shall enjoy this bail and shall conduct his life freely, from this moment to the moment he shall be charged before a Court of law with a specific offence, in which event, the trial Court shall regulate his matters by any appropriate orders such as may be made from time to time.***
- 3. The applicant shall present himself before the DCIO Nairobi Area on 7th November, 2007 at 8.00 a.m. to enable the said DCIO to take any information such as the DCIO may require, in connection with whatever criminal charge the DCIO may want to bring against the applicant.***

Orders accordingly.

DATED and DELIVERED at Nairobi this 15th day of October, 2007.

J.B. OJWANG

JUDGE

Coram: Ojwang, J.

Court Clerk: Huka

For the Applicant: Mr. Khalwale

For the Respondent: Ms. Gakobo