

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Misc Civ Appli 61 of 2006

DEVANS CHILELO MWANGADE
.....APPLICANT

VERSUS

THE ATTORNEY GENERAL
.....RESPONDENT

R U L I N G

The applicant herein, Devans Chilelo Mwangade, took out a Motion pursuant to the provisions of Section 23(3) of the Criminal Procedure Code and sought to be granted bail before arrest. I have perused the Criminal procedure code and I am unable to trace that section. May be the applicant wanted to invoke Section 123(3) of the Criminal Procedure Code. Unfortunately the Section 123(3) only relates to an accused person already arrested.

The applicant seeks to be arrested and to be granted bail pending arrest by the Kenya Police. I will excuse the failure to cite the relevant section of the law and consider the application before court on its merits.

The applicant has filed an affidavit in support of the motion he swore on the 21st day of July 2006. It is the fear of the applicant that he may be arrested by the police on allegation that he made sexual advances to two female pupils in his school, Likoni Muslim primary School. The applicant claims that the pupils have booked a report at Likoni Police Station and that the police have issued a warrant of arrest. He also claimed that the police are now looking for him everywhere.

The applicant alludes that the pupils and their parents have made a false claim against him because he punished the pupils by sending them home. He said the complainants were actuated by malice and that malice is manifested by the fact that the complainants have gone to broadcast the complaint in Pwani FM Radio Station. The applicant now fears that he may be arrested, detained, restricted and that he may possibly lose his job.

I have considered the concerns raised in the application and the facts deponed on affidavit. The nature of complaint relates to sexual offences. In normal circumstances the charge is bailable. It has been alleged that the applicant may be arrested, detained and restricted by the police on account of the malicious charge. The applicant thinks that the only impartial arbiter at the moment is a court of law. I have anxiously considered this application and I think the applicant raises serious concerns touching on the administration of justice right from the investigation level of crimes such as this. I appreciate the fact that the police cannot investigate the matter without having access of the applicant. My mind tells me that the applicant must have gone underground for fear of being arrested and being held in a police cell. The applicant is however ready to co-operate with the police in the matter so long as he is assured of his freedom. If this court were to accept and grant such an application it is likely to be clogged with similar matters. In any case if the police held him for an unnecessary long period the constitution is very clear as to how long a suspect should be held for such offences. If the police breach the express constitutional provisions, the court will obviously intervene. In any case the police also have powers to release suspects on police bonds or cash bail pending investigations. In the end I see no merit in the motion. The same is ordered dismissed.

Dated and delivered at Mombasa this 25th day of July 2006.

J.K. SERGON

J U D G E

In the presence of Miss Mwaniki for the Respondent

N/A Oruko for the applicant

Court: Copies of the ruling to be given to the state.

SERGON, J