



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC CRIMI APPLI 470 OF 2005

GEOFFREY JOEL MOMANYI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The applicant **DR. GEOFFREY JOEL MOMANYI** applies to this court for anticipatory bail bond for he is apprehensive that he may be arrested at any time and be subjected to inhuman and degrading treatment by the police.

The facts which gave rise to this application are briefly as follows:

The applicant is a Director of a company known as **LOISE LTD**. Loise Ltd entered into an agreement with another company known as **TERRA CRAFT LTD** to construct 45 flats for Loise Ltd along Ngong Road on LR NO.2/144 Kilimani. It was a condition of the Agreement that Terracraft Ltd would construct the flats up to the second floor before any payment would be made and after the Quantity Surveyors had confirmed the amount put in and also after the Architect had issued a certificate. To facilitate Terracraft Ltd to move to the site, Loise Ltd paid Terracraft Ltd Shs.300,000/= mobilization fees. Terracraft then moved to the site.

The reason why the construction was to reach the second floor was to enable the applicant to advertise the property for Sale so that the intending purchasers would pay deposits. The applicant had negotiated for more funds to the tune of Shs.77,000,000/= from Shelter Afrique which could only be released after the construction of the flats had reached the second floor. Terracraft Ltd had a problem since they did not have the capacity to construct the flats to the second floor. Loise Ltd then requested Terracraft to move out of the site so that it could put in a new contractor who could facilitate the work. Terracraft agreed to move out on condition that they were paid a sum of Shs.1,500,000/=.

This agreement was made after a meeting held at the site between the representatives of Loise Ltd and Terracraft. The meeting was attended by Dr. Momanyi who was Chairman, Mrs. Momanyi, Mr. Henry Ndungu Kinuthia, Managing Director Terracraft, Njeri Muchiri – Terracraft, Martin Kinyua – Kenton Project Cost Accountant and Lydia Gachoya – Project Manager – who took minutes. The final figure could be worked out later. Terracraft received the said amount but refused to move out of the site. This was on 21st June 2005. In July 2005, the applicant was arrested and locked up in cells at Kilimani Police Station on instructions of Kinuthia of Terracraft who demanded Shs.13,403,000/= from the applicant in order to have him released from the police cells. The applicant being under apprehension persuaded the said Mr. Kinuthia to accept post dated cheques for the amount he was demanding. Mr. Kinuthia accepted the post dated cheques but again changed his mind and demanded to be paid cash Shs.400,000/= before he could concede to the release of the applicant. The applicant requested his wife to mortgage their car to

get the demanded amount Shs.400,000/= cash to pay the said Mr. Kinuthia.

This is demonstrated by an agreement made on 27th July 2005 at the police station. The settlement of claim Agreement signed at the police station indicates that Shs.400,000/= and Shs.100,000/= was paid in cash, Shs.252,000/= post dated cheque, Shs.4,185,000/= post dated cheque to be paid by 30th August 2005, post dated cheque of Shs.4,285,000/= payable by 30th September 2005 and another post dated cheque of Shs.4280,000/= payable on 31st October 2005.

The applicant wrote Terracraft Ltd requesting them to hold the said post dated cheques until the Quantity Surveyor and the Architect had certified how much money was due to Terracraft Ltd and certificate issued. Further there was an arbitration clause in the construction Agreement and an arbitration process was to be commenced. On 2nd September 2005 police from Kilimani Police Station visited the home of the applicant with a view to arrest him but they found him very sick and they went away. On 3rd September 2005 they came back again but he was not in. They went back again on 6th September 2005 but they missed him.

Because of the harassment, intimidation and duress and taking into account that parties to the contract were Loise Ltd and Terracraft Ltd which are Limited Liability Companies, a matter which is purely civil, the applicant felt that his fundamental rights as enshrined in the constitution were being violated and he rushed to this court to seek protection. Counsel for the applicant submitted that the dispute between the two companies is purely civil and cannot be translated in a criminal offence and it is his contention that the police are being used by Terracraft Ltd as debt collectors.

The applicant has come to court under the provisions of the Constitution Sec.77 (1)(b) provides:

1. (a)

(b) Every person who is charged with a criminal offence shall be informed as reasonably practicable in a language that he understands and in detail, of the nature of the offence with which he is charged.

After considering the circumstances surrounding this case, I am satisfied that this is a suitable case to grant the applicant the protection sought. I grant the applicant Anticipatory Bail Bond as sought. For clarity purposes let me state that anticipatory bail bond does not prevent the police from investigating the applicant. The police will continue with their investigations if any and if they find evidence that the applicant has committed any offence, they shall go ahead to prefer charges against him in court and notify him to attend court on a given date to answer to those charges.

In the meantime the applicant will sign a bail bond of Shs.100,000/= with one surety of similar amount which will last until that day when the police will have charged him if at all and appear before the court.

Those are the orders of this court.

Dated this 16th day of September 2005.

J.L.A. OSIEMO

JUDGE