

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPL. NO. 553 OF 2004

JOSEPH CHERERE MWANGI.....APPLICANT

VERSUS

REPUBLICRESPONDENT

R U L I N G

The Applicant/Subject, **JOSEPH CHERERE MWANGI**, by a Notice of Motion dated 15th September 2004 brought under **Rules 3(1) and (2)** of Judicature Act, **Sections 60, 70 to 72 and 76** of the Constitution and **Section 123(8)** of the Criminal Procedure Code seeks Anticipatory bail or bail pending arrest. The Application is supported by an Affidavit sworn by the Applicant himself and by the grounds disclosed on the face of the Application.

This Application is unopposed. **MR. WANDUGI**, in his submissions on behalf of the Applicant relied entirely on the Applicant's sworn Affidavit. From the Affidavit, the facts surrounding the events that led to the filing of this Application are civil in nature. It is the Applicant's averments that his client, having hired him to carry out some survey work, seemed unhappy with his work. He reported against him to the Police following which the Police have harassed him and his family. He depones that whereas he has nothing against Police doing their work, he was apprehensive of them due to the constant harassment he and his family have been subjected to by the Police.

MISS NYAMOSI, learned counsel for the State submitted that the Application was not opposed. However, she submitted, bond should only be granted if indeed the offence for which the police were investigating against the Applicant was bailable.

An Applicant seeking redress from this court must bring himself within the provisions of **Section 84(1)** of the Constitution. He must demonstrate that his Constitutional rights and freedoms are enshrined in **Sub-section 70 to 83** of the Constitution (inclusive) have or are being or are likely to be compromised or breached.

I have carefully considered the Applicant's Affidavit, the grounds for this Application and in **MR. WANDUGI's** submissions. I am satisfied that the Applicant has demonstrated to the satisfaction of this court that his freedom of liberty as provided under the Constitution, has been compromised and or breached. I am satisfied that his apprehension as deponed to by him in his Affidavit is real and not imagined or speculative. I am therefore, satisfied that the Applicant deserves the Anticipatory bond he has sought. I grant his Application in the following terms: -

- 1). That the Applicant be and is hereby admitted to bail, for all bailable offences under the law in the sum of 200,000/- with one surety of like sum (Two hundred thousand only).**
- 2). That the Applicant do execute a personal bond in the sum of 200,000/- and provide a surety in said sum as stated in (a) above within three days from date herein.**
- 3). That the Applicant do present himself to the Respondent or their servants or agents, with or without counsel within 7 days from date of executing the bond.**

4). In default of any paragraphs above, (1 to 3 inclusive) the bail granted herein shall lapse.

Orders accordingly.

Dated 23rd November 2004, at Nairobi.

LESIIT

JUDGE