



Letting v Director of Public Prosecution & 2 others (Miscellaneous Criminal Application E084 of 2022) [2023] KEHC 18023 (KLR) (2 June 2023) (Ruling)

Neutral citation: [2023] KEHC 18023 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL APPLICATION E084 OF 2022
RN NYAKUNDI, J
JUNE 2, 2023**

BETWEEN

MARCELINE JEBITOK LETTING APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTION 1ST RESPONDENT

THE DIRECTOR OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT

INSPECTOR GENERAL OF POLICE 3RD RESPONDENT

RULING

Coram: Hon. Justice R. Nyakundi

M/s R.M. Wafula & Co. Advocates

1. The Applicant approached this court vide a Notice of Motion dated 29th November 2022 seeking the following orders;
 1. Spent
 2. That this honourable court be pleased to arrest the Applicant and grant her anticipatory bail pending charge or investigation by the 1st 2nd and 3rd Respondents on such terms as the court may deem fit.
 3. Spent
 4. Any other orders the court may deem proper.
2. The application is premised on the grounds set out therein and the contents of the affidavits sworn by the Applicant.



Applicant's Case

3. The Applicant contends that she manages the residential rental premises on the property known as Eldoret/Municipality Block 9/17 (Border farm) 1997 on behalf of her brother. Further, that Consolata Nyambura is one of the tenants who has been in arrears for over a year. On 22nd September 2022 and as a result of a dispute between the two the Applicant was summoned by the police. When her advocates visited the OCS, they learnt of warrants of arrest that had been issued against her. She contends that the police have made calls to her employer and have been pursuing her. She urged the court to grant the orders as she is likely to be arrested and subjected to bodily harm.

Respondent's Case

4. The Respondents did not respond to the application. There is evidence on record, by way of affidavits of service, that they were served with said application.

Analysis & Determination

6. The Applicant seeks, in a nutshell, anticipatory bail. There is an emerging trend of parties seeking anticipatory bail in a manner that seems to undermine the seriousness of such orders. These are not orders that the courts casually grant on the whim of a party alleging harassment from the police without proper substantial proof. In the case of *Mandiki Luyeye v Republic* [2015] eKLR, Ngenye J held as follows:-

“Similar sentiments were observed in the case of *Eric Mailu vs Republic and 2 others* Nairobi Misc. Cr. Application No. 24 of 2013 in which it was emphasized that anticipatory bail would only issue when there was serious breach of a citizen's rights by organs of state. Accordingly, it is salient that anticipatory bail is aimed at giving remedy for breach of infringement of fundamental Constitutional rights in conformity with what the Constitution envisages constitutes protection of fundamental rights and freedoms of a citizen. It cannot issue where an Applicant labours under apprehension founded on unsubstantiated claims. The fear of breach to fundamental right must be real and demonstrable. An Applicant must demonstrate the breach by acts and facts constituting the alleged breach.”

7. The Applicant has not proved any infringement of any constitutional rights. In fact, the Applicant has not even proved she was summoned or that the police have been calling her or her employer. Under the [Constitution of Kenya](#), every citizen is entitled to the right to bail therefore this application is misplaced as the Applicant, if arrested, shall be accorded the right to be granted bail.
8. In the premises, I dismiss the application in its entirety. No orders as to costs.

DELIVERED VIA E-MAIL DATED AND SIGNED AT ELDORET ON THIS 2ND DAY OF JUNE 2023

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R. NYAKUNDI

JUDGE

