



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. CRIMINAL APPLICATION CASE NO. E193 OF 2020

LESIT, J

PATEL RAVJI RALJI.....1ST APPLICANT

DEVRAJ RAVJI2ND APPLICANT

VERSUS

DIRECTOR OF PUBLIC CRIMINAL INVESTIGATION....1ST RESPONDENT

INSPECTOR GENERAL OF POLICE.....2ND RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION.....3RD RESPONDENT

RULING ON APPLICATION FOR ANTICIPATORY BAIL.

1. The Notice of Motion application has been brought under several **Articles** of the **Constitution** among them **23, 24, 29, 49, 159** and **165** and **Sections 123** of the **Criminal Procedure Code**. The Applicants seek orders as follows:

(1) Moot

(2) That this honourable court be pleased to admit the Applicants to anticipatory bail pending arrest or charge on such terms as the court may deem fit.

(3) That the Respondents whether acting by themselves, their agents, representatives and/or all other officers subordinate to them be and are hereby restrained from summoning, arresting, holding, detaining, incarcerating and/or in any other way interfering with the Applicant's liberty and/or in any other way without following the due process of the law and in matters related to properties L.R. No. 209/21507, L.R. No. 209/21508, L.R. No.209/8323, L.R. No.209/18298 and L.R. No. 209/11309 and/or any other property of the Applicants pending the inter-partes hearing and determination of this application.

(4) That the costs of this Application be provided for.

(5) That other order and/or directions as this Honourable Court deems fit and just to grant.

2. The Applicants have cited 21 grounds as the justification for the orders sought. In brief they seek to be granted anticipatory bail in matters related to five parcels of land **L.R. No. 209/21507, L.R. No. 209/21508, L.R. No.209/8323, L.R. No.209/18298 and L.R. No. 209/11309.**

3. The case was adjourned several times before it was finally heard. Finally, when it came up for hearing on the October 1, 2020, the counsels for the Interested Parties, Mr. Wagara and Mr. Jaoko urged that since the Applicants had been charged before the criminal court for offences related to parcels of land over which their clients had interest, they were no longer interested in participating in the proceedings.

4. The ODPP through Mr. Mutuma learned Prosecution Counsel stated that the State was yet to file any responses to the application. He applied for 14 days to enable them file submissions in response to the application. The matter was adjourned to 22nd October, 2020 for the submissions and ruling date.

5. When the case came up on the 22nd October, the State through Mr. Mutuma submitted that following the arraignment of the Applicants in

various criminal cases before the lower court, the State was not going to file any submissions. Mr. Musyoka for the Applicants insisted on pursuing their application. He urged that the Applicants had filed submissions in the matter dated 30th September, 2020, and that they wished to rely on those submissions.

6. I have considered the application by the Applicants in this case. The Applicants have framed one issue for determination which is whether the Applicants are entitled to the orders sought in the application dated 21st July, 2020 and in particular being admitted to anticipatory bail on the terms and conditions as the honourable court may deem fit.

7. It is trite law that this court has power to grant anticipatory bail orders. In addition to the many precedents providing for this, including the celebrated cases of **Stanley Munga Githunguri Vs. Republic [1986] KLR 1** and **Samuel W’Njuguna Vs. Republic [2004] eKLR** relied upon by the Applicants, the law has also developed in this area. In the precedents quoted above, the High Court has made it very clear that a person can apply for Anticipatory bail before arrest. Certain conditions must be met. I will mention these later on in this ruling.

8. The words of **Article 49 (1) (h)** of the Constitution is clear that an arrested person has a right to be released on bail or bond pending a charge or trial unless there are compelling reasons. Under the Constitution, and in particular **Articles 23, 29 and 258** the court is empowered to hear and determine applications relating to denial, violation or infringement of or threat to a right or fundamental freedom in the Bill of Rights.

9. The issue is whether the Applicants have demonstrated that their rights are under threat of infringement, violation or denial. The facts presented to court are contained in the grounds on the face of the Notice of Motion application. More facts are also provided in the supporting affidavits and the filed written submissions.

10. The Applicants claim that they have been under constant threats, harassment and intimidation through the acts of the Respondents in this case. They blame one person as the catalyst for their constant threats. They explain that the reason for those acts was ownership of property which the Applicants lawfully own. They complain that the Applicants actions smack of impropriety, illegality, arbitrariness, manifest injustice, impunity, irregularity and oppression. The Applicants state that there has been frustration of their legitimate expectation and flagrant infringement of their constitutional rights.

11. I have considered the application, together with the affidavits sworn in support of the application and the filed written submissions. Having carefully considered them, I find that the Applicants have not proved through any factual or other evidence that the Respondents have acted illegally, arbitrarily, unjustly, irregularly or oppressively. The actions of the Respondents have given rise to 2 criminal cases against the Applicants. Apart from dropping huge words to describe the acts of the Respondents, there was no proof provided to substantiate those words in the form of demonstrating them.

12. The Respondents have both constitutional and statutory duty and powers to investigate criminal complaints made to them. The Applicants admit in their pleadings that indeed certain complaints were filed with the Respondents, and that these government arms and institutions set about acting on them through investigations. Indeed, out of five plots of land which were the subject of investigations, two yielded criminal charges against the Applicants.

13. The only thing I think the Applicants can be heard to complain about is the length the investigations have taken and the resultant requirement for them to attend at the police. These can lead to harassment. There must be an end to investigations and all the police actions which accompany them.

14. I am of the view that the Applicants should benefit from a structured manner of police action, especially in respect of **LR 209/2107; LR 209/21508 & LR 209/18298**. The police should organize their act and structure the way they will continue performing their duty with regard to the investigations into the remaining parcels of land.

15. In the result I find and order as follows:

1. (a) Each of the Applicant is granted Anticipatory Bail of a bond in the sum of K.shs. 500000/= to be executed by each Applicants. This Bond will expire on the 14th January, 2021.

2. The Applicants shall abide by the following terms:

(a). The Applicants should appear with their counsel before the officer (s) investigating the case(s), and in particular parcels numbers LR 209/2107, LR 209/21508 and LR 209/18298, as and when summoned.

(b). The Applicants should only be required to attend to the police during the normal working hours and only during week days.

(c). The Police should finalize their investigations and make a determination whether to charge the Applicants or not within 2 months of today.

3. This matter will be mentioned before this court for further orders on January 14, 2021.

DATED, SIGNED AND DELIVERED THROUGH TEAMS THIS 10TH DAY OF NOVEMBER, 2020

LESIT, J.

JUDGE

In the presence of

Mr. Kinyua,Court Assistant

Mr. OmulanyaFor the Applicants

Mr. MutumaFor the State

LESIT, J

JUDGE

10th November, 2020