



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
MISC. CRIMINAL APPLICATION 55 of 2017

ANDREW AKENDO OGOMBE.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....1ST RESPONDENT

INSPECTOR GENERAL OF THE NATIONAL

POLICE SERVICES.....2ND RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATIONS.....3RD RESPONDENT

RULING

Andrew Akendo Ogombe, the Applicant, filed a Notice of Motion dated 24th February 2017 under Articles 21(I), 49(h) and 50(2) of the Constitution and Sections 39, 123(1) 3 and 124 of the Criminal Procedure Code. In it he sought the main prayer that he be released on bail pending his arrest and charge.

He attached a self sworn affidavit to the application in which he deponed that he had been employed by the Non-Governmental organizations Co-Ordination Board on 1st April, 2007 and that he diligently and faithfully executed duties assigned to him until he was suspended on 30th August, 2016 for allegedly receiving a bribe from one Abdirahman Mohamed. That he filed Industrial cause No. 1977 of 2016 challenging the suspension and was apprehensive that officers from the Director of Criminal Investigations could be out to harass, intimidate and incarcerate him. It was his honest belief that his arrest was imminent. He swore that the aforesaid anticipated actions by DCI officers were malevolent as he had fully co-operated with them. He attached his letter of confirmation in employment, a copy of the complaint, copy of an internal memo and a copy of his suspension letter.

The Applicant also filed a Further Affidavit sworn on 23rd March, 2017 in which he deposed that on 15th March, 2017 or thereabout he was informed that persons identifying themselves as CID officers from Central Police Station Nairobi obtained a letter purporting to have been authored by one Abdirahman Mohamed with the intention of arresting him. That he was apprehensive that the CID officers were being involved in a matter before the Ethics and Anti-Corruption Commission and that his arrest was imminent.

The application was canvassed before me on 29th March, 2017. Learned counsel, Mr. Olwang for the Applicant relied on the application and the affidavits filed in support of the application. Ms. Kimiri, for the Respondents submitted that she had talked to the CID officers and they had informed her that they were not aware of any ongoing investigation concerning the applicant. She submitted that the applicant's

contentions were all fueled by rumours.

The case of **W'Njuguna v. Republic [2004] 1 KLR 520** held that anticipatory bail will only issue,

“...when there are circumstances of serious breaches of a citizen's rights by an organ of the state which is supposed to protect the same.”

The Applicant averred to the breaches that have supposedly been perpetrated against him by the police are threats to arrest him. He did not disclose which police officers or station was investigating him. A look at the supporting affidavit clearly shows that he is labouring from rumours rather concrete evidence. The mere apprehension of an arrest does not amount to a violation of a person's fundamental rights. He has been unable to demonstrate what rights the police or any other person has breached. Accordingly, this is an application without merit and the same is hereby dismissed. It is ordered.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF APRIL, 2017

G.W. NGENYE-MACHARIA

JUDGE

In the presence of;

1. No appearance for the Applicant
2. M/s Kimiri for the **Respondent**.