



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI**

**MISC. CRIMINAL APPLICATION NO.143 OF 2015**

**EDDY PETER NDUNGU KIMEMIA.....APPLICANT**

**VERSUS**

**REPUBLIC.....1<sup>ST</sup> RESPONDENT**

**INSPECTOR GENERAL POLICE.....2<sup>ND</sup> RESPONDENT**

**DIRECTOR OF CRIMINAL INVESTIGATIONS.....3<sup>RD</sup> RESPONDENT**

**RULING**

By way of Notice of Motion dated 4<sup>th</sup> May, 2015 brought under Articles 19, 20, 21, 22, 23(1), 24(1), 25(a, b, c), 26(1, 3), 28, 29, 31 and 165 of the Constitution, Section 123 of the Criminal Procedure Code, the inherent jurisdiction of the High Court and all enabling provisions of law and Constitution, the applicant herein prays that he be admitted to anticipatory bail pending arrest and charge under certain conditions as the court may direct. And that the Inspector General of Police and all officers subordinate to him be prohibited from arbitrarily arresting the applicant. The application is supported by the affidavit of the applicant sworn on 4<sup>th</sup> May, 2015.

The applicant was represented by Learned Counsel Mr. Isaiah Kandie and Mr. Nyangoro while the respondents were represented by Learned State Counsel Mr. Mureithi.

Briefly, the case for the applicant is that sometime on 30<sup>th</sup> September, 2014 he reported to SpringValley Police Station of invasion of a land in Springs Valley owned by a company for which he is a director. The land had been invaded by some twenty youths. Pursuant to this report the police acted and removed the youth from the land. After two or three weeks, the same youths invaded the land again and he made a report at the SpringValley Police Station. He was referred to the Land Fraud Unit at the CID headquarters based along Kiambu Road.

On 21<sup>st</sup> April, 2015 he was summoned to the CID headquarters by a police officer by the name Maloba. At 5.00 pm on the same date he was arrested and taken to Muthaiga Police station. On the following day he was arraigned in court and charged with falsifying a Deed Plan vide Criminal Case No.714 of 2015. He was released on cash bail and the hearing is due on 26<sup>th</sup> May, 2015.

It is also the applicant’s case that from the 26<sup>th</sup> April, 2015, he has been severally called by a CID officer by the name Kiragu who is based at Nairobi County CID headquarters who has given him information

that further charges would be preferred against him. As a result, he fell ill and was admitted at Kikuyu P.C.E.A. Church with high blood pressure. He is also diabetic.

While criminal case no.714 of 2015 was pending, on 6<sup>th</sup> May, 2015 police registered another charge at Kibera Law Courts vide Criminal case No.812 of 2015 in which the applicant is charged alongside two others. The applicant did not present himself to court for taking of the plea. It is his contention that fresh charge sheet ought not to have been registered but instead the charge sheet in Criminal Case No.714 of 2014 be amended to include the additional charges.

Mr. Murethi opposed the application. He submitted that the application had been overtaken by events in that there was no cause for the applicant to be apprehensive that he would be arrested since fresh charges had already been registered in court. He stated that indeed a warrant of arrest had been issued against the applicant who failed to take plea in Criminal Case No.812 of 2015.

He submitted that it was not true that the applicant had been admitted to hospital but was only seen as an outpatient. He had not also demonstrated that any of his rights had been violated by a state organ. And in any case, if he were arrested he would be charged within the 24 hours. He urged the court to dismiss the application.

In rejoinder Mr. Nyangoro submitted that the orders sought are deserved since the applicant has already been admitted to bail in Criminal Case No.714 of 2015. He also refuted the allegations that a warrant of arrest was issued yesterday against the applicant.

Having considered the respective submissions, it is my view that the applicant has not demonstrated that the respondents have in any way breached his constitutional rights which is a prerequisite requirement for granting the orders sought. See the case of W'NJUGUNA – VS – REPUBLIC NAIROBI MISCELLANEOUS CASE NO.710 OF 2002, (2004) 1 KLR 520 the court held that anticipatory bail shall be granted:-

**“.....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.”**

In the instant case, the applicant has asked the court to grant him the bail pending arrest because he is apprehensive that the police are likely to arrest him so that they can charge him with other offences which are additional to the charges he is facing in Criminal Case No.714 of 2015. But the police have already done that by preferring the charges in Kibera Criminal Case No.812 of 2015. In that case, the fear of apprehension has been overtaken by events. All that the applicant is required to do is to present himself before Kibera Law Courts for purposes of taking plea in that criminal case. For this reason, I do not think that the police in investigating the offence(s) giving rise to Criminal Case No. 812 of 2015 violated the applicant’s constitutional rights. The court at Kibera could also be doing its rightful duty by either summoning or issuing a warrant of arrest against the applicant so that he can present himself to answer to the charges in that court.

As regards the illness of the applicant, I have seen the letter dated 6<sup>th</sup> May, 2015 from PCEA Kikuyu Hospital signed by Dr.Nyatuga and the same only indicates that the applicant was seen on 5<sup>th</sup> May, 2015 at 11.00 pm with uncontrolled blood pressure and was given 2 days off duty. This may not mitigate his case because as already aforestated the application is overtaken by events. Probably it may be usefull before the courts trying him.

I do not also wish to comment on the matter relating to the manner of trial of the two criminal cases facing the applicant as this is neither a trial nor a revision court.

I will also not comment on the purported warrant of arrest issued against the appellant yesterday in Criminal Case No.812 of 2015 because the proceedings of that court have not been presented before this court.

Having said so, it is my view that this application has not satisfied the threshold required by the law to grant the orders sought. The same is accordingly dismissed.

It is so ordered.

**DATED** and **DELIVERED** at **NAIROBI** this 7<sup>th</sup> day of May, 2015.

**G. W. NGENYE – MACHARIA**

**JUDGE**

**In the attendance of:-**

1. Mr. Kandie for the applicant
2. Mr. Mureithi for the respondent