

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

MISC. CR. APPL. 13 OF 2015

GEORGE KOBIA NGUTHARI.....APPLICANT

VRS

REPUBLIC THROUGH THE OFFICER .

COMMANDING STATION (OCS)

ISIOLO POLICE STATION RESPONDENT

RULING

By an application dated 27th April, 2015, the applicant George Kobia Nguthari prays that the court do arrest him and grant him bail pending arrest and charge by the OCS, Isiolo Police Station and that the OCS do appear before the court to show cause why he and his officers are seeking to arrest the applicant. The application is supported by an affidavit in which he deponed that on 16th November, 2015, the OCS Isiolo Police Station and his officers were looking for him at his residence in order to arrest him and that he has been living in fear since. He is apprehensive that the OCS is seeking to arrest and have him locked up yet he has not committed any offence. He believes that the OCS and his officers are being instigated by his business rivals who want him harassed and tortured. He is apprehensive that if arrested, he will not be allowed to communicate with others to his disadvantage and loss. The applicant's counsel Mr. Omari submitted from the bar that he had visited the police station with the applicant but was not informed why the applicant was being sought and was sent from one officer to another; that after they left the police officers went to the applicant's home again. He urged that if the police want to arrest the applicant they should do so procedurally.

Mr Musyoka, Learned State Counsel said that he was partially opposing the application and urged that if bail is granted, it should be conditional to the effect that if police require the applicant, he should attend the police station himself.

The respondent did not file any reply. Despite that failure, am alive to the fact that the police have investigative and arrest powers as delegated to them through the DPP by dint of Article 157 (4) and (9) of the Constitution. However, those powers should be exercised fairly.

In this case, the police officers are said to have visited the applicant's home once. There is no evidence that they have done any act to harass or try to arrest the applicant. The rest of the information given is what the counsel told the court from the bar.

The other allegations that the police may detain the appellant incommunicado have no basis. The allegations leveled against the business partners is also speculation. This court cannot be used to interfere or bar the police from carrying out their mandate unless the applicant demonstrates that there is likelihood of abuse of power by the respondent. In this case, the State did not have a serious objection and for that reason I will order that the applicant be released on his own bond of KSh.100,000/= and should appear before the OCS Isiolo on 18/5/2015. The bond terms will lapse on the said date. It is so ordered.

DATED SIGNED AND DELIVERED THIS 4TH MAY, 2015

R. V. P. WENDOH

JUDGE

Present:

Mr. Musyoka for State

Mr. Owori for Applicant

Faith, Court Assistant

N/A, Applicant