



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI**

**MISC. CRIMINAL APPLICATION NO.141 OF 2015**

**IN THE MATTER OF SECTION 29, 39, 47 AND 48 OF THE CONSTITUTION OF KENYA  
AND THE CRIMINAL PROCEDURE CODE THE BILL OF HUMAN RIGHTS**

**BETWEEN**

**SAMWEL MWAYI MBEWA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

By Notice of Motion dated 4<sup>th</sup> May, 2015 the applicant prays that the court be pleased to arrest and release him on bond. The application is brought under Section 29, 39, 47 and 48 of the Constitution of Kenya and Sections, 39, 123 and 124 of the Criminal Procedure Code and all other enabling provisions of the law. It is supported by the affidavit of the applicant sworn on 4<sup>th</sup> May, 2015.

Learned Counsel Mr. Udoto for the applicant submitted that the applicant who is an employee of CFC Bank is apprehensive that police officers are likely to arrest him on allegations that he has taken some money from the bank. That since the 1<sup>st</sup> of May 2015 he has been receiving telephone calls from unknown persons who claim they are police officers demanding that they would arrest him because he took some money from the bank. For that reason and further taking into account that he is a young man with an expectant wife the court should grant him bail pending his arrest. It was submitted that he is ready to appear before Langata police station for purposes of aiding the police with investigations.

Learned State Counsel Mr. Mureithi opposed the application. He submitted that the applicant has not demonstrated that any state agency had infringed on his rights. That the mere apprehension of his arrest cannot amount to infringement of his constitutional rights. That in any case, the identity of the persons who are allegedly calling the applicant were not disclosed.

Having considered the application and the respective submissions, I take the following view of the application. It is settled law and principle that for bail pending arrest to be granted the applicant must demonstrate that there exists a serious breach of his or her fundamental rights by a state organ. 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 ought to 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 present case, the applicant comes to court only on ground of apprehension by unknown persons and although the said persons claim to be police officers, the identity of the telephone numbers by which they call him have not been disclosed. The dates of those calls have also not been given. It is thus difficult to conclude that the applicant is under any harassment by police officers. In any case, if he is ready and willing to go to Langata Police Station to assist with investigations, nothing stops him from doing so. I am of the view that a person should not rush to court so as to cripple the police powers of doing their rightful duties of arresting a suspect and conducting investigations for an offence they reasonably believe has been committed. Furthermore, even if the applicant were arrested he would only be held in police

custody for not more than 24 hours. This short period of incarceration is aimed at aiding the police to conduct thorough investigations before arraigning a suspect in court. If I were to order that the applicant be not arrested the court would be negating the due process of investigations to take its course.

In conclusion, I find that this application is not merited as it has not met the threshold for granting bail as envisaged under Article 23 of the Constitution. 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 attendance of:-**

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