



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO

CR. MISC. APPL. NO. 1 OF 2014

JOHN KOECH..... APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

The subject matter of this ruling is the Motion dated 31/1/2014 taken out by **John Koech** hereinafter, referred to as the Applicant. In the aforesaid Motion, the Applicant sought for the following orders:

- a. The service of this application be dispensed with in the first instance.
- b. That this Honourable court be pleased to put the Applicant herein under arrest.
- c. The Applicant is entitled to bail pending the arrest and preferred charges by the Police of this matter.
- d. The costs of this application be borne by the Applicant.

The Applicant swore an affidavit he filed in support of the Motion.

I have considered the oral submissions of Mr. Nyaingiri, learned advocate for the Applicant. I have also considered the grounds set out on the face of the Motion and the facts deponed in the Supporting Affidavit. The Application appears to be ex-parte and temporary in nature. It is meant to protect the Applicant from losing his freedom while being interrogated or being investigated. Of course, the court while determining the matter, has a wide discretion to give directions on the way forward.

The Applicant is the Chairman of a committee known as Kericho/Bomet Comprehensive Eye Services Project hereinafter, as K.B.C.E.S established under the **Kenya Society For The Blind Act Cap.251 Laws of Kenya**. The Applicant has averred that as a result of his chairmanship, K.B.C.E.S received the following donations from Site Savers International:

- a. Motor vehicles
- b. Office Construction and equipment
- c. Low vision Building at the District Hospital, Kericho
- d. Motor Cycles
- e. A rehabilitation building – Kericho
- f. Several Brail Machines and Papers
- g. Canes to the project within Kericho/Bomet Counties.

The Applicant has alleged that there has been a dispute over the above-mentioned assets following the withdrawal of funding by donors towards the end of June 2013 which are under the possession and

occupation of the Project Management Committee. The Applicant further proceeded to state that the aforementioned assets are not in any danger of being alienated or disposed of in any manner. The Applicant then dropped the **bombshell!** that allegations have been made to the Police against him and his Project Committee members which were unfounded. The Applicant was of the view that the allegations made to the Police would amount to misuse of the police force. The Applicant averred that he and his colleagues have surrendered all the project assets to the County Government for continuity of service provision and management and security of the assets and that they should remain under the Kericho County Government's custody. It would appear from paragraph 7 of the applicant's affidavit that the Kenya Society for the Blind (K.S.B) made allegations to the effect that the Applicant and his colleagues have refused to surrender the assets in their possession and occupation. It is the submission of the Applicant that Kenya Society for the Blind (K.S.B) are facilitators but not the owners of the donate assets and facilities. He claimed that, that is the reason why police are looking for him. He urged this court to give him the orders he prayed for failure to which the project activities will be at standstill thus causing great suffering for all the blind persons within Nyamira, Nakuru, Narok, Kericho, Bomet and Baringo counties. The Applicant further argued that as a result of the complaint being presented to the Police, there is tension between the beneficiaries, members of the community and the Directors for (K.S.B) Kenya Society for the Blind. For this reason, the applicant beseeched this court to issue an order restraining the police from arresting and possibly detaining him until such a time this court calls him to answer to any charge against him by the committee.

The application is based on **Article 49(1)h, 50(2)(a) and 51(1)** of the **Constitution**. The Applicant also cited **Sections 123(1),124 and 125(1)** of the **Criminal Procedure Code**. There is a terse argument that the complaint by Kenya Society for the Blind (K.S.B) to the police amounts to an abuse of police powers. There is no clear information of the nature of complaint Kenya Society For the Blind has lodged with the police but it would appear it is in respect as to the surrender of project assets under the control of the Applicant's committee. It is therefore, difficult for this court to determine whether or not the police are abusing their powers while seeking to interrogate or record a statement from the Applicant. The Applicant has cited **Article 49** of the **Constitution** which safeguards the rights of arrested persons. The Constitution and the relevant laws recognizes the powers of the police to arrest any person as a suspect for purposes of interrogation or investigation. The Applicant was enjoined by law to show the constitutional the rights which are likely to be breached if arrested. The law presumes that the law enforcers fully appreciate the import of **Article 49(1) (f) (i)** of the **Constitution** that a person arrested must be taken before a court of law within twenty-four hours. Under **Article 49(1)h** of the Constitution a person arrested is entitled to be released on bond or bail on reasonable terms pending a charge or trial. The Applicant has not alleged that the police are likely to detain him for more than the period permitted by the constitution neither has he alleged that the police will deny him bail or bond pending charge. The Applicant has cited **Articles 50** of the **Constitution** which relates to a fair trial. He has not alleged that he is likely not to have a fair hearing. In my view, the applicant's application for arrest and anticipatory bail remains unfounded and was not established to the required standards. In fact on the converse, it is the applicant who is abusing the court process in seeking for the court's intervention rather than the police abusing their powers.

For the above reasons, I dismiss the Motion with no order as to costs.

Dated, Signed and delivered this 5th day of February, 2014.

J.K.SERGON

JUDGE