

REPUBLIC OF KENYA

IN THE HIGH COURT AT BUNGOMA

CRIMINAL MISC. APPL. NO. 4 OF 2014

MOSES NYONGESA WAFULA **APPLICANT**

VERSUS

REPUBLIC **RESPONDENT**

RULING

1. Before me is an application dated 22nd January, 2014 by Moses Nyongesa Wafula brought under section 123 (1) of the Criminal Procedure Code. The Applicant sought an order that in the event of a formal complaint is made against him, he be allowed to record a statement at the Bungoma Police Station and thereafter be bonded to appear in Court. The grounds upon which the application was grounded upon were set out in the body of the application and in the Applicant's Affidavit sworn on 22nd January, 2014.
2. The application was opposed by the State vide Grounds of Opposition dated 4th February, 2014. The gist of the opposition was that the application was inept, ambiguous and bad in law, that it did not meet the threshold for grant of the orders sought, that the Applicant had not demonstrated that there was danger of violation of his rights by the Respondent and that the application sought to pre-empt investigations by the Respondent. Mr. Kibellion, Learned Counsel appeared at the hearing and urged that since the Applicant had not appeared the application should be dismissed for non-prosecution.
3. I have considered the application, the Affidavit in Support and the Respondent's Grounds of Opposition. I have also considered the authorities relied on by Mr. Kibellion. This is an application under Section 123 of the Criminal Procedure Code for anticipatory bail or bail pending arrest. The ground upon which the application is made is that, the Applicant had learnt that one Stanley Masinde had made a false report to the Bungoma Police Station that he be arrested for having falsely obtained money from him. That the Applicant therefore was apprehensive that he could be arrested on the said false information.
4. In the Case of **Kelvin Okore Otieno -vs- Republic NBI Crim. Revision No.207 of 2013**, the Court held that investigations culminating in the arrest of an applicant and arraignment in Court are known processes of our legal system and they *per se* do not amount to an infringement of fundamental rights and freedoms. In **W'Njuguna -vs- Republic [2004] 1KLR 520**, the Court held that anticipatory bail can 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.”

Finally, in the Case of **Erick Mailu -vs- Republic H.C. Misc. Cr. Rev. No.24 of 2013**, the Court held that an Applicant is entitled to equal protection before the law under the Constitution and should exercise that right by reporting any threats to his person. That investigations being a known legal process should not be pre-empted by granting anticipatory bail.

5. In the Case before me, the only threat complained of by the Applicant is the possibility of his arrest by the police on a complaint he alleges to be false against him by one Stanley Masinde. As held in the Cases of **Kelvin Okore and Erick Mailu** aforesaid, investigations, arrest and arraignment in Court are known legal processes in our justice system. There is no allegation of any threat to breach of fundamental rights and freedoms of the Applicant. In any event, the Applicant failed to attend and prosecute his application which I have, nevertheless fully considered and found to be unmerited.

6. In this regard, I find that the Application does not meet the threshold for grant of anticipatory bail in the circumstances the same is hereby dismissed.

Dated and delivered at Bungoma this 10th March, 2014.

A. MABEYA

JUDGE