



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
MISC. CRIMINAL CASE NO. 118 OF 2013

MUTUA MUNUVEAPPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

This Notice of Motion application dated 3rd October, 2013 and expressed to be brought under articles 20, 22, 23(1), 27(1) and 49 (1) (h) of the Constitution and section 39, 123, and 124 of the Criminal Procedure Code seeks for anticipating bail pending arrest.

The grounds are found in the affidavit of the applicant Mutua Munuve who depones that he had entered into a contract for the supply of grains with a company going by the name Blak International for Ksh. 21,525,000/=.

That he was only paid Ksh. 1 million with the promise that the balance of Ksh. 20,525,000/= would be paid in due course. He communicated the same to his suppliers including one David Mutua Malii. Subsequently he was charged together with the owner of Blak International one Tony Dhiman in Criminal case No. 1712 of 2013 Mombasa and was released on bond.

He further depones that on the 23rd day of September, 2013 David Mutua Malii filed a civil suit case No. 1651 of 2013 for the recovery of Ksh. 2,331,566/=.

Further that he later learned that one Johnstone Kazyoka Kiiti had supplied David Mutua Malii with dry maize worth worth Ksh. 716,124/= which is part of the claim in Mombasa Civil Case No. 1651 of 2013.

That he is being sought by police so as to be charged for obtaining by false pretences from Johnstone Kazyoka Kiiti.

It is argued that the criminal proceedings are vindictive and a violation of article 27(1) and 29(a) of the Constitution.

The application is opposed on the grounds that it has not been shown that police intend to arrest him and charge him with the offence of obtaining by false pretences.

Upon perusing the affidavit in support of this application and hearing counsels submissions I do find that the applicants apprehension of certainment of his liberty is real.

It is accordingly ordered that he be admitted to a bond of Ksh. 500,000/= with one surety of similar amount or cash bail of Ksh. 250,000/=. Upon posting of the bond, the applicant to present himself to the police station handling his other matters within seven (7) days from today.

Ruling delivered dated and signed this **8th** day of **November, 2013**.

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M. MUYA

JUDGE

8TH NOVEMBER, 2013

In the presence of:-

Counsel for the state Miss Ogweno

Learned Counsel for the applicant

Applicant Mwalimin

Court clerk Musundi