



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**Miscellaneous Criminal Application 48 of 2012**

**WILFRED OMELA EJAKAIT.....APPLICANT**

**~VRS~**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicants seek anticipatory bail. There is Kimilili SRM CC no.25 of 2011 in which the Plaintiff Joseph Taabu Desilo seeks to evict the Defendant Peter Okiru Omega from land parcel number Bungoma/Kamokoiwa/4976. The Plaintiff claims he bought the land from one Joseph Wabwile Munga'u in 1995/1996 and has since become the registered owner. The Defendant allegedly encroached on the land and occupied the Plaintiff's houses thereon. The Defendant's case is that the land was bought by his father, the late Nicodemus Eroto Omega. The deceased was the Plaintiff's brother. The Plaintiff, somehow and fraudulently, acquired title to the land. The Defendant has always occupied the land and denied the allegation that he has encroached on it. He has complained to the DCIO, Mukuyuni about the Applicants and police are looking for them to arrest them. The Applicants came for bail because they are witnesses for the Plaintiff in the land case and allege that the complaint to police is so that they are charged falsely to prevent them from testifying in the case.

Whereas it is the right of the Applicants not to be arrested on false or trumped-up charges, anticipatory bail should not be used to give immunity from appearing before the police who wish to question them in connection with a reported offence or complaint. The Applicants should have no fear when requested to go to a police station following a complaint against them. It is part of their civic duty and responsibility to help the police in any investigation. If they have come to learn that the Defendant has lodged a complaint against them, and yet they are witnesses of the Plaintiff, it is expected of them to go to the DCIO Mukuyuni to find out the nature of the complaint and explain themselves. It is only then that the DCIO will make an informed decision to charge or not to charge them.

I admit each Applicant to Ksh.50,000/= bond to appear before the DCIO Mukuyuni within the next 24 hours to enable whatever investigations that may be on going and to record whatever statement that they may be legally called upon to make.

Dated, signed and delivered at Bungoma this 1<sup>st</sup> day of October, 2012.

**A. O. MUCHELULE**

**JUDGE**