

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ERICK GACHUHI WANJIKU,)	
)	
Plaintiff,)	
vs.)	
)	Case No. 15-CV-2658-DDC-TJJ
JOHNSON COUNTY, KANSAS, et al.,)	
)	
Defendants.)	
)	

**REPORT AND RECOMMENDATION ON MOTION TO
PROCEED WITHOUT PREPAYMENT OF FEES**

Plaintiff commenced this action *pro se* on March 13, 2015 by filing a Complaint (ECF No. 1) alleging that he was arrested on a false allegation and improperly detained for nearly a year by Johnson County, Kansas.¹ Plaintiff names three Defendants: Johnson County, Lenexa Police Department, and Lenexa Police Department Detective Steve Grigsby. This matter comes before the Court on Plaintiff's Motion to Proceed without Prepayment of Fees (ECF No. 3). Plaintiff also submitted an affidavit of financial status in support of his motion. The Court has considered the motion and affidavit and recommends that Plaintiff's motion be denied.

Section 1915 of Title 28 of the United States Code allows the court to authorize the commencement of a civil action "without the prepayment of fees or security therefor, by a person who submits an affidavit...[if] the person is unable to pay such fees or give security therefor." To succeed on a motion to proceed *in forma pauperis*, the movant must show a financial inability to pay the required filing fees. The decision to grant or deny *in forma pauperis* status under section 1915 lies within the "wide discretion" of the trial court.

¹ Compl. at 3–4.

Based on the information contained in his Affidavit of Financial Status (ECF No. 3), Plaintiff has not shown a financial inability to pay the required filing fee. Plaintiff claims monthly income in the amount of \$2,600 from his employment as a driver with Weriga Transporters, LLC.² Plaintiff claims monthly expenses of \$2,009.³ Based on this information, Plaintiff has not established that his access to the courts would otherwise be seriously impaired if he is not granted *in forma pauperis* status.⁴

The Tenth Circuit has held that magistrate judges do not have authority to enter an order denying a motion to proceed without prepayment of fees because such ruling is the functional equivalent of involuntary dismissal.⁵ The undersigned Magistrate Judge therefore submits to the District Judge the following Report and Recommendation regarding Plaintiff's motion.

RECOMMENDATION

IT IS THEREFORE RECOMMENDED that Plaintiff's Motion to Proceed Without Prepayment of Fees (ECF No. 3) be **DENIED**.

IT IS THEREFORE ORDERED that a copy of this Report and Recommendation shall be sent to Plaintiff via certified mail. Pursuant to 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72, and D. Kan. R. 72.1.4, Plaintiff shall have **fourteen (14) days** after service of a copy of these proposed findings and recommendations to serve and file with the U.S. District Judge assigned to this case, his written objections to the findings of fact, conclusions of law, or recommendation of

² Aff. Fin. Stat. (ECF No. 3) at 2.

³ This number was computed by adding the \$700.00 of support Plaintiff claims to provide for his mother to the expenses he claims on page 5 of the Affidavit of Financial Status. *Id.* at 2, 5.

⁴ Although not relevant to the instant motion, the Court also notes that Plaintiff previously filed an action in this Court against the same Defendants which appears to arise out of the same set of facts. *See Wanjiku v. Johnson County*, Case No. 14-cv-2001-RDR-JPO. Judgment was entered against Plaintiff in that action. Judge Rogers dismissed Plaintiff's claims against Defendant Lenexa Police Department with prejudice, and dismissed the claims against Defendants Johnson County, Kansas and Steve Grigsby without prejudice.

⁵ *Lister*, 408 F.3d at 1311-12.

the undersigned Magistrate Judge. Plaintiff's failure to file such written, specific objections within the 14-day period will bar appellate review of the proposed findings of fact, conclusions of law, and the recommended disposition.

Dated in Kansas City, Kansas this 23rd day of March, 2015.

s/ Teresa J. James
Teresa J. James
United States Magistrate Judge