



**Makori v Director Of Criminal Investigations & 2 others;
Akuma (Interested Party) (Miscellaneous Criminal Application
E036 of 2024) [2024] KEHC 8333 (KLR) (26 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 8333 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
MISCELLANEOUS CRIMINAL APPLICATION E036 OF 2024**

TA ODERA, J

JUNE 26, 2024

**IN THE MATTER OF SECTION 84 (1) AND (2) OF THE CONSTITUTION OF KENYA
THE BILL OF HUMAN RIGHTS AND THE CRIMINAL PROCEDURE CODE
IN THE MATTER OF ELIJAH MAKORI**

BETWEEN

ELIJAH MAKORI APPLICANT

AND

THE DIRECTOR OF CRIMINAL INVESTIGATIONS 1ST RESPONDENT

INSPECTOR GENERAL NATIONAL POLICE SERVICE 2ND RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS 3RD RESPONDENT

AND

LABAN ATANDI AKUMA INTERESTED PARTY

RULING

1. Laban Atandi the applicant herein filed application dated 8.3.24 seeking that:
 1. That he be enjoined interested party be enjoined as an interested party in these proceedings.
 2. That upon prayer 1 be granted that he be granted leave to respond to application dated 22.2.24.
 3. The same is based on the ground that the applicant has been mentioned adversely in the said application severally and thus he has a right to be heard. Also that no prejudice would be occasioned to the applicant.



4. The application is also based on the annexed affidavit of the Applicant in which he deponed that he wishes to be heard in the matters having been mentioned and that the applicant has concealed material facts to this court.
2. Prosecution submitted that the applicant in the application dated 8.3.24 is duly represented by the Director of Public Prosecution and thus his intended joinder is not necessary. The respondent submitted that the stake of the applicant has not arisen herein as no case has been filed and that the applicant does not meet the threshold for joinder as an interested party.
3. I have carefully considered the application, the responses, the submissions and the law.
4. The director of public prosecutions is the Chief Public Prosecutor Under Article 157 (6) (a) of the constitution of Kenya. He represents complainants in criminal matters which he files in court. In case a complainant is of the view that his interest is not being adequately protected by the state then he is at liberty to appoint Counsel to watch brief for him or even institute private prosecution proceedings. The proceedings herein have been instituted by Elijah Makori the applicant in the Anticipatory bail application. In the case of *Eunice Wangui Mbogo & Another V Margaret Mbucu Mathuri (Sued As Administrator Of Adriano Mathuri Ngondi) & 2 others* the principles to be considered for joinder of a party were well enumerated in the decision in *Meme v Republic* [2004]1 124, which principles are;
 - a) joinder of a person because his presence will result in the complete settlement of all questions involved in the proceedings,
 - b) joinder to provide a protection of a party who would otherwise be adversely affected in law,
 - c) joinder to prevent a likely course of proliferated litigation.
5. The applicant has not met the threshold set hereinabove. As rightly submitted by defence, an application for anticipatory bail is a matter between the applicant and DPP. The applicant has not established The application is thus premature as no stake of the applicant has arisen at this stage.
6. I find no merit in the application dated 8.3.24 the same is dismissed.
Applicant to file submissions for the dated 26.6.24 within 14 days from today. Interim orders are extended. Mention on 19.9.24.

T.A ODERA

JUDGE

26.6.24

DELIVERED VIRTUALLY IN THE PRESENCE OF: -

Applicant

Koima for the State

Court Assistant: Oigo

