



Wanjohi & another v Inspector General of Police & another (Miscellaneous Criminal Application E209 of 2024) [2024] KEHC 16073 (KLR) (Crim) (19 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16073 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E209 OF 2024
DR KAVEDZA, J
DECEMBER 19, 2024**

BETWEEN

**JAMES MAINA WANJOHI 1ST APPLICANT
ANN NJAMBI MGANGA 2ND APPLICANT**

AND

**THE INSPECTOR GENERAL OF POLICE 1ST RESPONDENT
DIRECTORATE OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT**

RULING

1. The applicants filed the present application dated 17th December 2024. The application is supported by an affidavit sworn by the applicants of similar date.
2. The Applicants assert that, in 2010, they were engaged in the timber business under the names "Super Sleeper" and "Harbour Wood and Allies," primarily importing timber from the Democratic Republic of Congo (DRC) to Kenya.
3. On or about 29th October 2010, the Applicants entered into an agreement to import 14,000 board feet of hardwood timber valued at Kshs. 1.6 million, of which they received half of the payment, with the balance to be settled prior to loading the timber. It is noted that this amount excluded transportation and duty costs.
4. The Applicants claim that the timber remains detained at the revenue and duty point in Boga, DRC, due to their partners' failure to remit the outstanding duty. These challenges led the Applicants to diversify into the coffee business, registering the company "Jemman Coffee and Mining Co. Limited."



5. The Applicants' associates, who had contributed to the funds, visited DRC to assess the timber's status and subsequently reported to other partners. This led to police involvement in various stations, including Kiambu, Kamukunji, Central, and Ruiru.
6. The Applicants contend that their coffee business has faced further setbacks, including an April 2018 consignment from DRC still detained by the Kenya Revenue Authority (KRA), despite all necessary importation procedures being complied with.
7. The Applicants allege police interference, including surveillance, phone tapping, and eavesdropping, which has impeded their ability to conduct business and run their company. The Applicants further claim that they are unable to move freely within the country, with incidents of police officers in unmarked cars following and tracking their movements. They assert that their agents are also subject to harassment and intimidation.
8. The Respondents have allegedly threatened the Applicants with arrest on unspecified charges, raising concerns that such actions are arbitrary and will violate their right to fair administrative action.
9. At this juncture, the duty of this court is not to interrogate whether the applicants' apprehensions are genuine but rather, to protect their constitutional rights and fundamental freedoms guaranteed to all persons.
10. Article 49(1) of *the Constitution* states that an arrested person has the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling persons not to be released. While the right to anticipatory bail or bond pending arrest is not specifically provided for by statute, there is no lacuna in *the Constitution*.
11. Moreover, Article 22(1) of *the Constitution* states that every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed, or threatened. The said article does not discriminate against parties seeking orders of anticipatory bail.
12. Before issuance of such an order, the court must be convinced that the threat is real and not just mere apprehension. The applicants assert that they face continued intimidation by law enforcement over a business agreement with partners gone sour. They maintain that unless the reliefs sought are granted, their rights will be unjustly curtailed.
13. At this ex parte stage, I am only supposed to be satisfied, which I am, that unless the orders sought are granted, the applicants' right to liberty under Article 29 of *the Constitution* will be compromised.
14. Having considered the application, the supporting affidavit of the applicants, and the annexures thereto, I hereby order as follows:
 - i. The application is certified urgent.
 - ii. The applicants herein are admitted to anticipatory bail in the sum of Kenya Shillings One Hundred Thousand (Kshs. 100,000) each to be deposited in court.
 - iii. For the avoidance of doubt, the respondents are at liberty to investigate or charge the applicants for any criminal conduct. However, they shall not arrest or detain the Applicants in view of order (ii) above or until further orders of the court.
 - iv. The applicants' advocates are further directed to escort the applicants to the offices of the 1st and 2nd respondents for questioning and/or interrogation within seven (7) days from the date hereof and not later than 31st December 2024.



- v. Upon the conclusion of investigations, and if a decision to charge the applicant has been made, the 1st and 2nd respondents shall not arrest or detain the applicants but they shall be informed of the court where they are to appear for plea taking.
- vi. Order (v) shall remain in force until plea has been taken and the trial court has set new bail/ bond terms in which case the orders of this court shall lapse.

RULING DATED AND DELIVERED VIRTUALLY ON THIS 19TH DAY OF DECEMBER 2024.

D. KAVEDZA

JUDGE

