



**Nyangara v Rwoti (Miscellaneous Criminal Application E070 of 2024)  
[2024] KEHC 15919 (KLR) (18 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15919 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
MISCELLANEOUS CRIMINAL APPLICATION E070 OF 2024**

**TA ODERA, J**

**DECEMBER 18, 2024**

**BETWEEN**

**JOHN RWOTI NYANGARA ..... APPLICANT**

**AND**

**EDWIN MIYOGO RWOTI ..... RESPONDENT**

**RULING**

**Introduction**

1. The applicants herein filed the originating notice of motion dated 27. 5. 24 under Articles 10, 22, 23, 25, 27, 28, 29 31 47 48 49 (1), 50 and 165 (6) and 259 of the Constitution of Kenya as read with section 123 of the Criminal Procedure Code seeking:
  - a. Spent
  - b. Spent
  - c. Spent
  - d. That this Honourable court be pleased to issue a conservatory order restraining the respondents, their servants, agent, junior officers and or any body from effecting and / or anybody from arresting, charging harassing or otherwise however interfering with the applicant without conducting investigations and according them an opportunity to be heard.
  - e. The Honourable court do issue any other orders that it may deem fit to grant.
  - f. Costs be in the cause.
2. The application is based on the annexed affidavit of Dr. Edwin Miyogo Routi dated 27.5.24 and the grounds that;



- i. The 2<sup>nd</sup> applicant is a medical doctor and director of Silver Care Medical Centre in Kisii.
  - ii. That the applicants have information that police intend to arrest them and have them prosecuted for unknown reasons.
  - iii. That on 25.5.24 police visited the applicant's premises along Kisii -Kilgoris road raised, surrounded and cordoned off with a view to arrest 2<sup>nd</sup> applicant and on 26.5.24 they also visited the home of 1<sup>st</sup> applicant with a view to arrest him.
  - iv. Also that the applicants have never been summoned to the police and no warrants of arrest have been issued against them.
  - v. The applicants are apprehensive that their constitutional rights are about to be violated.
  - vi. That the respondents are abusing their powers with a view to harass intimidate and oppress the applicants.
  - vii. Further that the respondent caused extensive chaos on 25.5.24 while supervising illegal repossession of the facility.
  - viii. The applicants are entitled to secure protection of the law under Articles 27,25, 28, 29, 47, 49, 50 and 51 of the Constitution and the court is obliged to enforce due process of the law.
  - ix. That fundamental rights and freedoms of the applicants cannot be limited under Article 25 of the constitution.
  - x. Respondent will not suffer any prejudice of the orders are granted.
3. The respondents did not file any response to the application despite service.

### **Determination**

4. Upon consideration of the Application and the law I proceed to dispose of the application on a preliminary issue on whether the;
5. The applicant seeks enforcement of fundamental rights and freedoms under Article 22 of the constitution. The procedure for filing of petitions under Article 22 is provided for under Rule 4 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and procedure Rules. Rule 10 (1) provides for the form of the petition filed under rule 4. Rule 23 provides for conservatory or interim orders to wit;

“

“(1) Despite any provision to the contrary, a Judge before whom a petition under rule 4 is presented shall hear and determine an application for conservatory or interim orders within such time as may be limited by the Court.....”

In the case of *Muslims For Human Rights (MUHURI) & 2 Others v Attorney General & 2 Others* High Court Petition No. 7 of 2011 Justice Ibrahim held:

“What is clear to me from the authorities is that strictly a “Conservatory Order is not an injunction as known in Civil matters or generally in other legal proceedings but is an order that tends to and is intended to preserve the subject/



matter or set of Page 10 of 12 circumstance that exist on the ground in such a way that the constitutional proceedings and cause of action is not rendered nugatory.

6. The applicant moved this court by what they described as originating notice of motion in which they sought interim anticipatory bail and conservative orders. This is a miscellaneous application which is not supported by a petition. It is trite law that a conservatory orders are interim orders issued pending hearing and determination of a Constitutional Petition to preserve the subject matter. No petition was filed herein and so the application has no basis.
7. I proceed to strike out the application.
8. Orders accordingly. File is closed.

**T.A ODERA**

**JUDGE**

**DECEMBER 18, 2024**

**DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF:**

Court Assistant - Oigo

N/A for Applicants

