



REPUBLIC OF KENYA



Madzayo & 11 others v Director of Public Prosecutions & another (Miscellaneous Criminal Application E097 of 2023) [2023] KEHC 23388 (KLR) (28 September 2023) (Ruling)

Neutral citation: [2023] KEHC 23388 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E097 OF 2023**

A. ONG'INJO, J

SEPTEMBER 28, 2023

**IN THE MATTER OF ARTICLE 2, 19, 20, 22, 23, 25, 27, 29, 47,
48, 49, 50, 258, 259, AND 260 OF THE CONSTITUTION OF
KENYA**

AND

IN THE MATTER OF FREEDOM AND SECURITY OF PERSONS

BETWEEN

STEWART MADZAYO 1ST APPLICANT
AMINA MNYANZI 2ND APPLICANT
PAUL KATANA 3RD APPLICANT
BETTY KACHE MWAVUO 4TH APPLICANT
OSCAR IHA WANJE 5TH APPLICANT
BROWN SAFARI 6TH APPLICANT
IBRAHIM ABDI 7TH APPLICANT
RASHID ODHIAMBO 8TH APPLICANT
TWAHIR ABDULKARIM 9TH APPLICANT
RAY KATANA 10TH APPLICANT
HARON NDUTI TETE 11TH APPLICANT
MOSES FURAHA KEAH 12TH APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT



RULING

1. The applicants approached this court *vide* notice of motion application dated July 23, 2023 under certificate of urgency and the supporting affidavit thereto sworn by Mr Danstan Omari Advocate for the applicants seeking that this honourable court be pleased to the applicants herein anticipatory bail at such terms and conditions that this honourable court may deem just and fit in the circumstance to secure their attendance before the Directorate of Criminal Investigations for questioning or statement recording or for other incidental purposes.
2. The applicants also prayed that this honourable court be pleased to restrain the 2nd respondent, their servants, agents or any other officer of the National Police Service or any other law enforcement officer from arresting the applicants herein.
3. The said application was on grounds that the applicants were ardent members of the official opposition, the one Kenya Azimio Alliance and strong supporters of the Orange Democratic Movement party leader Raila Odinga. That persons and politicians linked with Raila Odinga and the Orange Democratic Party were arbitrarily arrested and faced trumped up charges in regard to the nationwide demonstrations by Kenyans in opposition.
4. That unless this court admits the applicants to anticipatory bail, their rights to a fair hearing, right to peacefully demonstrate, to freedom of movement and to associate freely with others exercising their political rights will be violated.
5. This court cannot curtail the mandate of the 2nd respondent, their servants, agents or any officer of the National Police Service or any other law enforcement officer from executing their mandate as provided for under section 24 of the National Police Service Act No 11 A of 2011 where it is suspected an offence is being or is about to be committed..
6. The apprehension that the applicants are likely to be arrested has now been diminished by the bilateral talks between the governing party and the opposition and as such application is overtaken by events.

DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS THIS 28TH DAY OF SEPTEMBER 2023

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of: -

Ogwel- Court Assistant

Mr. Ngiri for Respondent

Mr. Mabeya Advocate H/B for Mr. Omari Advocate for the Applicants

No appearance for Applicant

HON. LADY JUSTICE A. ONG'INJO

JUDGE

