



Maigacho v Director of Public Prosecutions & 2 others (Miscellaneous Criminal Application E125 of 2022) [2022] KEHC 10651 (KLR) (Crim) (28 June 2022) (Ruling)

Neutral citation: [2022] KEHC 10651 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E125 OF 2022
LN MUTENDE, J
JUNE 28, 2022**

BETWEEN

MILKA KIIBUI MAIGACHO APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT

THE DIRECTORATE OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT

THE INSPECTOR GENERAL OF POLICE 3RD RESPONDENT

RULING

1. Milka Kiibui Maigacho, the applicant, has approached this court seeking anticipatory bail on grounds that she is required for questioning/investigations by the Respondents for arraignment before a court of law. She also seeks issuance of orders to the 2nd and 3rd Respondent to personally show cause in event that the order is disobeyed.
2. The application is premised on grounds that being a lead Pastors. at Generation of Christ Ministries Church at Santon Kasarani, a call was received informing her that the 2nd and 3rd Respondents had visited the Institution with the aim of arresting her for an unspecified offences. They have trailed her severally and are abusing power. That the applicant is willing and ready to submit herself to a just and fair legal system/process in which her fundamental rights and freedoms are respected and protected.
3. The Respondents through a replying affidavit deponed by No 75410 CPL. Omutelema Japheth deposed that the applicant faces a charge of obtaining money by false pretences contrary to Section 313 of the *Penal Code*, having been charged in Criminal Case No 1129/2022 and has been released on bond of Ksh 600,000/-



4. That the applicant was arrested on March 12, 2022 from her residential house at Mwihoko area Kiambu and has not been harassed, trailed or embarrassed by any Police Officer as the case is pending hearing, but, other complainants have lodged similar complaints against the applicant, therefore, more charges are likely to be preferred upon conclusion of investigations.
5. In a rejoinder, the applicant stated that she now knows the reason why the Respondents intend to arrest and embarrass her as the atrocities she is being accused of were committed by Javan Were Ochieng her former employer, who ran a charitable program of supporting needy students by giving them financial grants, who would be required to pay 10% of the fees while Javan donated 90% of the fees for students who desired to study abroad. That Javan requested to use her Church Bank Account to receive the 10% fees from students that would forward to him hence he was the perpetrator of the heinous crime.
6. That Javan has undertaken to refund the monies to some of the students; and despite being the culprit, he continues to dine with Senior Police Officers at the Police Canteen, Kasarani, who are bent on arresting her instead of him, an act that has made her suffer from mental anguish.
7. The application was canvassed through written submissions. Mr. Ngaramba, learned Counsel for the applicant urged that there are many complaints that arose following errors and omissions of Javan Were but now the Police were intimidating and harassing the applicant whose husband has been arrested in an endeavor to reach her. That the applicant naively allowed Javan Were to use the Church Bank Account to collect money from students who were to be sponsored.
8. The application was opposed by the State through learned Counsel Ms. Akunja who urged that an anticipatory bail could not be issued in a vacuum. That the applicant had not demonstrated the threat by the Investigating Officer in carrying out investigations. That there being other complainants was not a sufficient ground for issuance of the anticipatory bail.
9. I have considered the application, affidavits in support and reply, and arguments by both Counsels for the Applicant and Respondents.
10. The applicant herein seeks a special relief of anticipatory bail, Article 22 (1) of the [Constitution, 2010](#) provides thus:

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 or infringed, or is threatened.
11. Article 165 of the [Constitution, 2010](#) grants the High Court the jurisdiction to determine applications where an individual's fundamental freedom may be violated or infringed.
12. The Judiciary [Bail and Bond Policy Guidelines](#) provide that:

“The High Court may grant anticipatory bail, that is, bail pending arrest, provided the applicant demonstrates that his or her right to liberty is likely to be compromised or breached unlawfully by an organ of the State that is supposed to protect this right. Further, the applicant must demonstrate that the apprehension of arrest is real and not imagined or speculative.”
13. Therefore, this court has the discretion to grant anticipatory bail as



provided by the law but the discretion must be exercised sparingly. This was captured in the case of *W’Njuguna v Republic*, (2005) eKLR where the court stated that:

“If the Police have contravened or is likely to contravene the rights of a citizen for ulterior purpose, an anticipatory bail should be an appropriate order to be granted”

14. Reasons given by the applicant herein shows that she has already been arraigned in a court of law and released on bond for offences specified. She has alleged in her reply that she knows the reason why she is being sought but denied being the culprit. Such allegations should be established through investigations.
15. Further, the applicant admits the fact of the money having been obtained from various individuals and deposited on her account. On a balance of preponderance the accusation cannot be dismissed as baseless or having been made due to ill motive.
16. Normally a court will not interfere with investigations being conducted for an offence that has been committed. The court should give the investigators the opportunity of conducting and completing investigations. From the foregoing applicant herein has failed to demonstrate existence of unnecessary harassment, therefore, her fundamental freedom is not being interfered with.
17. In the result the threshold of granting the special relief sought herein has not been met. Accordingly, the application fails and is hereby dismissed.
18. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI, THIS 28TH DAY OF JUNE, 2022.

L. N. MUTENDE

JUDGE

IN THE PRESENCE OF:

Applicant

Mr. Ngaramba for Applicant

Mr. Kiragu for the State

Court Assistant - Mutai

