



Ali v Office of the Director of Public Prosecutions & 3 others (Miscellaneous Criminal Application E005 of 2025) [2025] KEHC 279 (KLR) (22 January 2025) (Ruling)

Neutral citation: [2025] KEHC 279 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
MISCELLANEOUS CRIMINAL APPLICATION E005 OF 2025**

**DR KAVEDZA, J
JANUARY 22, 2025**

BETWEEN

ALI HUSSEIN ALI APPLICANT

AND

**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT
DIRECTORATE OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT
NATIONAL POLICE SERVICE COMMISSION 3RD RESPONDENT
INDEPENDENT POLICING OVERSIGHT AUTHORITY 4TH RESPONDENT**

RULING

1. The applicant filed the notice of motion 13th December 2024 seeking orders of anticipatory bail. The application is supported by an affidavit sworn by the applicant of similar date.
2. The Applicant contends that a civil dispute arose with the complainant over a botched sale of aircrafts parts. That the complainant used his network to influence and report the applicant at Wilson Airport Police station. Since the report was made police officers have been harassing him and there is imminent risk of arrest. No charges have been preferred against him despite the continued intimidation and harassment by law enforcement. The police have warned him against travelling outside the country and have threatened to take his identification documents.
3. The Applicant believes that any such arrest would be arbitrary and would infringe upon his rights. He therefore seeks protection from these arbitrary and unjust actions.
4. At this juncture, the duty of this court is not to interrogate whether the applicant’s apprehensions are genuine but rather, to protect his constitutional rights and fundamental freedoms guaranteed to all persons.



5. 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.
6. 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.
7. Before issuance of such an order, the court must be convinced that the threat is real and not just mere apprehension. The applicant asserts that he faces continued intimidation by law enforcement over his legal representation of the accused persons in court. He maintains that unless the reliefs sought are granted, his rights will be unjustly curtailed.
8. At this ex parte stage, I am only supposed to be satisfied, which I am, that unless the orders sought are granted, the applicant's right to liberty under Article 29 of the Constitution will be compromised.
9. Having considered the application, the supporting affidavit of the applicant, and the annexures thereto, I hereby order as follows:
 - i. The applicant herein is admitted to anticipatory bail in the sum of Kenya Shillings Fifty Thousand (Kshs. 50,000) to be deposited in court.
 - ii. For the avoidance of doubt, the respondents are at liberty to investigate or charge the applicant for any criminal conduct. However, they shall not arrest or detain the Applicant in view of order (i) above or until further orders of the court.
 - iii. The applicant's advocates are further directed to escort the applicant to the offices of the 2nd respondent for questioning and/or interrogation within seven (7) days from the date hereof and not later than 31st January 2025.
 - iv. Upon the conclusion of investigations, and if a decision to charge the applicant has been made, the respondents shall not arrest or detain the applicant but he shall be informed of the court where he is to appear for plea taking.
 - v. Order (iv) 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 22ND DAY OF JANUARY 2025.

D. KAVEDZA

JUDGE

