



**Wanjiku v Director of Public Prosecution & 2 others (Criminal Miscellaneous Application E169 of 2024) [2025] KEHC 951 (KLR) (4 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 951 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL MISCELLANEOUS APPLICATION E169 OF 2024**

**JM NANG'EA, J  
FEBRUARY 4, 2025**

**BETWEEN**

**CHARLES NGURE WANJIKU ..... APPLICANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTION ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF CRIMINAL INVESTIGATION ..... 2<sup>ND</sup> RESPONDENT**

**INSPECTOR GENERAL OF POLICE ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This application is expressed to be bought pursuant to Article 159 of the [Constitution](#) and the [High Court Practice and Procedure Rules 2006](#) published vide [Legal Notice No. 6 of 2006](#). The Applicant seeks reliefs as hereunder;-
  - a. Spent
  - b. Spent
  - c. That the honourable court be pleased to grant the applicant anticipatory bail pending arrest or charge on such terms the court may see fit to impose pending the hearing of this application inter parte (sic).
  - d. That the honourable court be pleased to issue a conservatory order restraining the respondents, their servants, agents, junior officers and or anybody from effecting and/or anybody from arresting, harassing or otherwise however interfering with the applicant herein pending the hearing and determination of this application/petition(sic).
2. The applicant swore an affidavit in support of the application stating that he is a businessman in Kenya. He avers that officers from the Directorate of Criminal Investigations in Nakuru and Nairobi plan to



- arrest him on suspicion of obtaining a sum of Kshs. 4,500,000/= from one Wilson Gathogu. According to the applicant he had borrowed the money to invest in a business venture and make refund within an agreed period. He contends that the transaction is not in the realm of criminal law and therefore the police are abusing the criminal process to redress a business dispute.
3. The respondents oppose the application through an affidavit in reply sworn by a Prosecution Counsel named Nancy Sang. Counsel observes that anticipatory bail is not expressly provided for in the Constitution or Statute Law but the relief may be granted in the discretion of the court based on particular circumstances of every case. The court is told that since the order sought has an effect of impeding criminal investigations which is the exclusive mandate of the police, cogent and sound reasons for grant of the orders sought must be given. It is further averred inter alia that there are no exceptional reasons for allowing the application and I am urged to dismiss the same.
  4. Learned Counsel for the parties filed Written Submissions, which I have perused against the application and the rival affidavit evidence. Counsel for the Applicant submit that Article 29 of the Constitution guarantees every person the right to freedom and security including the right not to be deprived of freedom arbitrarily. Relying on this court's decision in Criminal Application No. E004 of 2024 eKLR, Counsel states that the criminal process should never be used to settle personal scores.
  5. The Respondents in their submissions reiterate that anticipatory bail is not expressly provided for under the Constitution or statute and therefore it is granted at the discretion of the court according to the circumstances of every case. Counsel for the Respondents submit that since the orders sought have an effect of impeding criminal investigations, any such orders should be based on "cogent and constitutionally sound reasons such as a serious breach of the Applicant's rights by an organ of the state which is supposed to protect the same." (See case law in W'Njuguna vs Republic [2004] eKLR cited by Counsel). The same sentiments were expressed in Mandiki Luyeye vs Republic [2015] eKLR also quoted in the Respondent's submissions.
  6. Counsel further refer the court to this court's judicial determination in Paul Ole Kuyana & Another vs Director of Public Prosecutions & 2 Others [2021] eKLR in which it was observed that an application for anticipatory bail may be considered under Article 23 of the Constitution. This provision empowers the court to grant appropriate reliefs for violation of the Bill of Rights including a threat of violation of a right.
  7. According to the Respondents the Applicant has not met the threshold for grant of anticipatory bail as set in the cited decisions.
  8. The Applicant in the instant matter craves the remedy for the reason that the respondents are allegedly abusing the criminal process to remedy a civil wrong. Whether what is under investigations by the police is a civil wrong or a criminal act or omission is for the court that may eventually hear the case to determine. There are no sound reasons advanced to warrant prohibiting the Applicant's arrest and prosecution by granting of anticipatory bail. The court is also alive to the fact that there are legal mechanisms to ensure fair trial in the course of hearing of a criminal case. The Applicant would not therefore be prejudiced if the reliefs sought are not granted. As is the law, anticipatory bail cannot be granted based on fear or speculation but serious breach of guaranteed rights which breach is not demonstrated.
  9. The Application is accordingly dismissed.

**RULING DELIVERED THIS 4<sup>TH</sup> DAY OF FEBRUARY, 2025 IN THE PRESENCE OF:**

**J. M. NANG'EA, JUDGE.**



Advocate for Applicant, Mr. Bosire  
Advocate for Respondents, Ms Sang  
The Court Assistant (Jeniffer)

