



REPUBLIC OF KENYA



**Njuguna & 4 others v Kibera & 2 others; Muoki & another (Interested Parties) (Miscellaneous
Judicial Review E001 of 2025) [2025] KEHC 7812 (KLR) (3 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 7812 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
MISCELLANEOUS JUDICIAL REVIEW E001 OF 2025**

DR KAVEDZA, J

JUNE 3, 2025

BETWEEN

**YVONNE NJERI NJUGUNA 1ST APPLICANT
PETER MUINDI MUNYAO 2ND APPLICANT
RUTH MUENI MAWEU 3RD APPLICANT
REBECCA KANANU MITHIKA 4TH APPLICANT
NICHOLAS GITONGA 5TH APPLICANT**

AND

**THE CHIEF MAGISTRATE COURT AT KIBERA 1ST RESPONDENT
DIRECTOR OF PUBLIC PROSECUTIONS 2ND RESPONDENT
INSPECTOR GENERAL POLICE 3RD RESPONDENT**

AND

**OWEN MUOKI INTERESTED PARTY
SAMMY KIPCHIRCHIR SANG INTERESTED PARTY**

RULING

1. The applicants have through an originating motion dated 30th May 2025, filed under a certificate of urgency, sought to be admitted to anticipatory bail pending arrest or charge. The motion is supported by an affidavit of even date.
2. The grounds advanced in support of the application are as follows: The applicants are living under fear of imminent arrest by the 1st and 2nd respondents for allegedly having forged the will of Ann Mbuli Munyao(deceased). The applicants have previously been arrested for the same reasons on 20th May



2025 but were subsequently released on police bond/bail terms. Officers under the direction of the 2nd Respondent have since been hunting down the applicants for allegedly violating the bail/bond terms on 22nd May 2025 when they did not show up for plea taking which they allege they were not informed about.

3. In dealing with an application of this nature, it is the constitutional duty of this court to go to the lengths and breadths of *the constitution* to protect the rights and fundamental freedoms where need be, but, it should be alive to its obligation not to curtail the other organs of state from carrying out their constitutional mandate. It is a very delicate balance of competing rights that this court is expected to carry out.
4. The applicants before this court are seeking anticipatory bail. The applicants have averred that they are apprehensive that the police may use their powers to intimidate and harass them over a civil dispute.
5. At this juncture, the duty of this court is not to interrogate whether the applicants' apprehensions are genuine but rather, to protect their constitutional rights and fundamental freedoms guaranteed to all persons.
6. 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 reasons 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*.
7. 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 a party seeking orders of anticipatory bail.
8. Before issuance of such an order, the court must be convinced that the threat is real and not just mere apprehension. They must demonstrate that unless the orders sought are granted by the court, their right to liberty will be infringed.
9. The applicants contend that they face an imminent risk of arrest stemming from an ongoing dispute concerning the allegations that they forged the will of Ann Mbula Munyao (deceased). In support of this application, the applicants have annexed the proceedings in the succession matter. Indeed, the applicants have been adversely named as people of interest in the ongoing investigations, further substantiating their apprehension of potential arrest.
10. At this ex parte stage, I am only supposed to be satisfied, which I am, that unless the orders sought are granted, the applicants' right to liberty under Article 29 of *the Constitution* will be compromised.
11. Having considered the application, the supporting affidavit of the applicants, and the annexure thereto, I hereby order as follows:
 - i. The application is certified urgent.
 - ii. The applicants herein are each admitted to anticipatory bail in the sum of Kenya Shillings One Hundred Thousand (Kshs. 100,000) to be deposited in court.
 - iii. For the avoidance of doubt, the respondents are at liberty to investigate or charge the applicants for any criminal conduct. However, they shall not arrest or detain the applicants in view of order (ii) above or until further orders of the court.



- iv. The applicants' advocates are further directed to escort the applicants to the offices of the 1st and 2nd respondents for questioning and/or interrogation within 5 days from the date hereof and not later than 10th June 2025.
- v. Upon the conclusion of investigations, and if a decision to charge the applicants has been made, the 1st and 2nd respondents shall not arrest or detain the applicants but they shall be informed of the court where they are to appear for plea taking.
- vi. Order (v) shall remain in force until a 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 IN THE ABSENCE OF PARTIES ON THIS 3RD DAY OF JUNE 2025.

D. KAVEDZA

JUDGE

