



Opondo v Attorney General & 2 others (Miscellaneous Criminal Application E003 of 2024) [2025] KEHC 8375 (KLR) (Civ) (12 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8375 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CRIMINAL APPLICATION E003 OF 2024**

AB MWAMUYE, J

JUNE 12, 2025

BETWEEN

EVERISTO ANINDO OPONDO APPLICANT

AND

ATTORNEY GENERAL 1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION 2ND RESPONDENT

INSPECTOR GENERAL OF POLICE 3RD RESPONDENT

RULING

1. The Applicant herein filed an application dated 8th January, 2024 seeking that he be admitted to anticipatory bail pending any contemplated arrests, investigations and/or charge by the Respondents.
2. The Application is anchored on the grounds on its face and further supported with the annexed Affidavit sworn by Everisto Anindo Opondo on 8th January, 2024 to which he avers that on or about 1st January 2024 at around 1:00 a.m a marital dispute occurred between the Applicant and his wife one Dorothy Wandia Njeru that resulted to the Applicant being physically assaulted by his wife in front of his children and the same culminated to her forcefully evicting him from their matrimonial home.
3. The Applicant alleges that his wife has since been demanding that he transfers some of the marital properties to her name and has even gone ahead to issue their tenants with new lease agreements instructing them to henceforth pay rent to her.
4. The Applicant further alleges that on or about 6th January 2024 at around 5:49p.m, he received a phone call from a man who introduced himself as Mr. Karanja and whose phone number was 0729741529. Mr. Karanja introduced himself as a police officer working for Director of Criminal Investigations unit at Central Police station Nairobi. He proceeded to inform the Appellant that he was on his way to



- question him but declined to state what he intended to question him about thus the Applicant declined to meet him.
5. The Applicant states that due to Mr. Karanja's intimidations, threats of sudden arrest and his failure to give him a reason for his questioning he proceeded to file a complaint at Muthangari Police Station under OB No. 28/06/01/2024 on 7th January 2024 at 10:46 p.m.
 6. The Applicant further alleges that on 8th January 2024, he was accompanied by his Advocates on record to Central Police Station where his advocate was informed that Mr. Karanja was in possession of the Applicant's M-pesa and bank statements that he wanted the Applicant to explain some of the transactions therein.
 7. He alleges that his Advocate requested for copies of the M-pesa and bank statements in order to allow the Applicant an opportunity to explain the alleged transactions but the request was denied. Upon inquiring where the said officer obtained the Applicant's personal information without a court order or his consent, the officer refused to reveal his sources.
 8. The Applicant states that it has come to his attention that his wife's sister – in - law is a Police officer based in Central Police Station and it is his belief that his wife and her sister-in-law are using Mr. Karanja to track his whereabouts, threaten and intimidate him into forcefully transferring the matrimonial property in his name to his wife.
 9. The Applicant further states that he has not committed any offence and he has not been offered any explanation as to what he is charged with, who the complainant is and why the Respondents seek to arrest him. He believes that the Respondents are being used to settle a marital issue that is civil in nature and therefore in order to protect, his right to privacy, freedom and liberty this Honourable Court should admit him to reasonable bail terms pending investigations and/or charge by the Respondents.
 10. The Applicant filed a further Affidavit sworn by Everisto Anindo Opondo on 8th January 2024 in Response to the Respondent's replying Affidavit that is not on record. He avers that, the complainant reported the Applicant to Central Police Station on allegations of money laundering the reason being that the sister a police officer stationed in Central Police station.
 11. The Applicant further avers that the allegations that the Investigating Officer called him prior to 6th January 2024 at 5:49 p.m are false and only meant to mislead this Honourable Court as no such evidence has been produced in support of the same. He indicated that he is an orthopedic surgeon with over 20 years experience running a private practice which sees that he receives several payments through cash from his patients and insurance companies. In addition, he states that he has rental properties from which he earns rental income and has never been involved in any criminal activities.
 12. The Appellant avers that the Investigating Officer is on a fishing expedition and is trying to find something incriminating against him. He claims that overtime he has received money from one Kevin Lunani as a loan to complete construction of apartments which he later repaid in a period of 1 year which he made payments through Mwonya Achieng Saline.
 13. He further states that it is clear that the investigating officer's actions amount to an abuse of the court process and the issue between the complainant and himself is marital in nature.
 14. The 2nd Respondent filed grounds of opposition dated 28th May 2024 to which they averred that the application herein is an abuse of the court process and cannot be granted in a vacuum since the Applicant has not demonstrated breach of his rights and fundamental freedoms for these reasons, they further aver that the application is unsubstantiated, misconceived and misplaced.



15. The Application was canvassed by written submissions with only the Applicant herein filing the same dated 26th February 2024. The Applicant submitted on two issues for determination namely; whether there was an infringement of the Applicant's fundamental rights and whether Applicant should be granted Anticipatory Bail.
16. On the first issue, the Applicant relied on Article 31(c) and (d) together with Article 47 (1) of *the Constitution* of Kenya 2010, Section 22 (1) of the Police Act and Section 118 of the *Criminal Procedure Code*. Reliance was also placed on the case of *W'Njuguna v Republic* [2004] eKLR which held that orders for anticipatory bail should be granted when there are circumstances of serious breaches of a citizen's rights by an organ of the state that is supposed to protect the same.
17. He submitted that the Investigating Officer unlawfully acquired the Appellant's Mpesa statements without obtaining a warrant as required under Section 118 of the Criminal Procedure Act and in total violation of his right to privacy. He further stated that the Investigation Officer never recorded the complainant's statement nor Mwonya Achieng Seline's statement therefore the allegation of wanting to charge the Applicant with the offence of money laundering is premature and unlawful.
18. On the second issue, the Applicant Relied on Article 23(1) and (3), Article 29 (a) and Article 49 1(h) of *the Constitution*. He further relied on the case of *Caroline Kuthie Karanja v Director of Public Prosecutions & 2 others* [2021] eKLR where the Court granted anticipatory bail to protect the rights under Article 29 of *the Constitution*. He contends that no reason has been given before this Honourable Court as to why investigations have been ongoing against him for a period of one year and one month.
19. According to the Applicant it is clear that the investigating officer was using his position as a police officer to intimidate and threaten the Applicant with the aim of assisting the complainant in the ongoing marital dispute. He therefore prayed that the Applicants Application dated 8th January 2024 be allowed as prayed.
20. None of the Respondents filed written submissions.
21. I have carefully considered the Notice of Motion application, the subsequent Affidavits, the 2nd Respondent's Grounds of Opposition and the Applicant's written submissions. Having done so, I find that the issue arising for determination is whether the application meets the threshold for grant of relief of Anticipatory bail.
22. Anticipatory bail is a direction issued by the court to release a person even before the person is arrested. Where anticipatory bail has been considered, courts have to apply the threshold for an application for violation or threat of right under Article 23 of *the Constitution*.
23. In *Republic v Chief Magistrate Milimani & Another Ex-parte Tusker Matress Ltd & 3 Others* [2013] eKLR Odunga J. explained the standard required in evaluation of applications for anticipatory bail and stated as follows:

“However before going to the merits of the instant application it is important to note that what is sought to be prohibited is the continuation of investigation rather than a criminal trial. The court must in such circumstances take care not to trespass into the jurisdiction of the investigators or the court which may eventually be called upon to determine the issues hence the court ought not to make determinations which may affect the investigations or the yet to be conducted trial. That this court has power to quash impugned warrants cannot be doubted. However, it is upon the ex parte Applicant to satisfy the court that the discretion given to the police to investigate allegations commission of a criminal offence ought to be interfered with. It is not enough to simply inform the court that the intended trial is bound



to fail or that the complaints constitute both criminal offence as well as civil liability. The High Court ought not to interfere with the investigative powers conferred upon the police or the Director of Public Prosecution unless cogent reasons are given for doing so.”

24. In *Mandiki Luyeye v Republic* [2015] eKLR with regards to anticipatory bail, the court held as follows:

“Similar sentiments were observed in the case of *Eric Mailu v Republic & 2 Others* Nairobi Misc. Cr. Application No. 24 of 2013 in which it emphasized that anticipatory bail would only issue when there was serious breach of a citizen’s rights by organs of state. Accordingly, it is salient that anticipatory bail is aimed at giving remedy for breach of infringement of fundamental constitutional rights in conformity with what *the Constitution* envisages constitutes protection of fundamental rights and freedoms of a citizen. It cannot issue where an Applicant labours under apprehension founded on unsubstantiated claims. The fear of breach to fundamental right must be real and demonstrable. An Applicant must demonstrate the breach by acts and facts constituting the alleged breach.”

25. It should be noted that merely feeling inconvenienced by investigations is not sufficient reason for relief of anticipatory bail. There has to be proof of violation, infringement, threat or contravention of a person’s right under *the Constitution*.

26. The Applicant has claimed violation and threatened violation of his right and fundamental freedom by the police at Central Police Station. He avers that a marital dispute erupted between him and Dorothy Wandia Njeru on 1st January 2024 where he was physically assaulted. On or about 6th January 2024 he received a call from a man who identified himself as Mr. Karanja from DCI Unit at Central Police station who indicated that he was headed to the Applicant’s Office to question him but wouldn’t reveal to him about what.

27. The Applicant further avers that intimidation and threat of sudden arrest from the said Mr. Karanja resulted to him filing a complaint at Muthangari Police station and recorded a statement on 7th January 2024. He also sought services of the advocate on record to accompany him to the police station when he met Karanja and 2 other officers on 8th January 2024 at Central Police Station. Further, the Applicant contends that upon inquiry of the meeting, he was informed that he was required to offer an explanation as to some of the transactions in his Mpesa and bank account.

28. According to the Applicant, the officers declined to reveal the source of the said information and who the complainant was. He avers that he believes the Mpesa and bank statements allegedly in Mr. Karanja’s possession were given to him by his wife in order to intimidate him to sign property over to her.

29. It follows that the 3rd Respondent ought to conduct investigations without harassing the Applicant. They can issue him with summons to attend court and take plea and only when he defaults should they arrest him. The Applicant attached as part of his evidence call logs between himself and one Mr. Karanja of Phone number 0729741529 and a statement he recorded on 7th January 2024 which is consistent with his claim.

30. An accused person has the right to be presumed innocent is violated when in such circumstances, he is harassed and treated like they are already guilty of the offence with which they are suspected of having committed. This then erodes the right to be presumed innocent from the onset with the accusers being prosecutor and judge. Arresting one in a hurried manner is one thing while prosecuting them successfully is another. Even if the police believe that they have overwhelming evidence against



the suspect, they ought not to act at the whims of the complainant but act in accordance with the law and the constitutional dictates.

31. In this case, the investigating officer did not intend to reveal to the Applicant the reasons for his intended arrest nor the source of his information warranting the arrest of the Applicant. There is no evidence that the Applicant escaped after allegedly committing an offence instead in fear of sudden arrest, he made a report to Muthangari Police Station and also sought services of an advocate due to the threat of an impending arrest.
32. Nothing prevents the police from summoning the Applicant and requiring him to attend court to answer to any charge. However, there is no evidence on record showing that there are pending investigations that the Applicant would interfere with if he is not arrested before being charged. If there are any such investigations, then nothing prevents the investigators from swearing an Affidavit to indicate how the Applicant would be required to assist in such investigations and why he must be placed in custody this seeking custodial orders for a specific time within which to complete those investigations.
33. I am therefore satisfied that the Applicant has demonstrated that his right to be presumed innocent is threatened with violation if he is arrested in a manner that he has described in his Affidavits and even though this Court cannot stop the Respondents from charging him with any offence, this Court can grant anticipatory bail to save him from the uncertainty that he appears to be subjected to leading to his filing of this Application.
34. Accordingly, I allow the application dated 8th January, 2024. The Applicant is granted anticipatory bail in the amount of Kenya Shillings Two Hundred Thousand (Kes. 200,000.00) and in relation to any case that may be instituted against him by the 2nd and 3rd Respondents on the subject matter of the events that occurred on or about 1st January 2024; and the amount that was to be deposited in the amount of Kes. 200,000.00 shall be applied as the same, if the same was deposited.
35. Should any charge be preferred against him, the Applicant being on anticipatory bail, shall be summoned to appear in court for plea taking without being arrested; with liberty for a warrant of arrest to issue if he does not appear before the Trial Court.
36. Orders accordingly and this file is closed accordingly.

DATED, SIGNED, AND DELIVERED VIRTUALLY THIS 12TH DAY OF JUNE, 2025.

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BAHATI MWAMUYE

JUDGE

In the Presence of:

Counsel for the Appellant:

Counsel for the Respondent:

Court Assistant:

