



**Barasa v DCI & another (Criminal Miscellaneous Application
E012 of 2025) [2025] KEHC 10178 (KLR) (15 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10178 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL MISCELLANEOUS APPLICATION E012 OF 2025
RN NYAKUNDI, J
JULY 15, 2025**

BETWEEN

PAUL WEKESA BARASA APPLICANT

AND

DCI 1ST RESPONDENT

ODPP 2ND RESPONDENT

RULING

1. Before this court is an application under certificate of urgency dated 24th January 2025 accompanied with a notice of motion expressed to be brought under section 123(1) of the *Criminal Procedure Code*, Article 49(1) (h), Article 23(3) of *the Constitution* of Kenya 2010 and all other enabling provisions of the law) seeking the following orders:
 - i. The exparte and pending the hearing and determination of this application, this honourable court be pleased to grant the applicant herein anticipatory bail at such terms and conditions that this honourable court may deem just and fit in the circumstances.
 - ii. That exparte and pending the hearing and determination of this application, the honourable court be and is hereby pleased to restrain the 1st and 2nd Respondent, their servants, gents or any officer of the National Police service or any other law enforcement officer from arresting and prosecuting the Applicant herein in relation to his cross-border courier and logistics business.
 - iii. That this honorable court be pleased to grant the applicant herein anticipatory bail at such terms and conditions that this honourable court may deem just and fit in the circumstance.
 - iv. That this honourable court be and is hereby pleased to restrain the 2nd Respondent, his servant, agents or any officer of the National Police Service or any other law enforcement officer from



arresting the Applicant herein in relation to his cross-border courier and logistics business or any other.

- v. That the honourable court do issue such further or other orders that in its discretion may deem fair and just in the circumstances
 - vi. That costs be in the cause.
2. The said application is premised on the following grounds:
- a. That the Applicant is the courier and logistics business plying his trade in the East African region, particularly South Sudan, Uganda and Kenya.
 - b. That the Applicant has been in the business since later December, 2023
 - c. That in early January 2024, the Applicant met one client named Naamani who he has ferried goods for in the said countries, and smoothly so for the larger period of their acquittance.
 - d. That Naamani then brought in other clients for the Applicant on account of his professionalism in the delivery of his service.
 - e. That for the entire of the year 2024, the Applicant, Naamani and his business associates engaged in a cordial business relationship as shown in the thread of Whatsapp messages exchanged between themselves
 - f. That between December 2024 and 10th January 2025, business relationship between the Applicant and one Naaman turned frosty as Naamani fell into financial hardships and started demanding money from the applicant.
 - g. That when the Applicant failed to heed to Naamni's demand, he started making threats to the Applicant's life and business.
 - h. That the situation was exacerbated when around the 10th of January 2025, the Applicant received calls from persons who introduced themselves as officers from the 2nd Respondent's offices threatening him that they would arrest him on account of Naamani's complaint.
 - i. That the Applicant has not been supplied with any information on the alleged complaint, if at all, by the 2nd Respondent.
 - j. That the said officers have been tracking the Applicant with precision as to his location, which gives the applicant the apprehension that it is indeed the 2nd Respondent's officers who have been tracking and calling the applicant.
 - k. That the Applicant is also suffering from allergic rhinitis and allergic conjunctivitis and has been in and out of hospital, the latest being the 13th of January 2025 when he was taken ill at Ceder Hospital Eldoret.
 - l. That the Applicant therefore moves this honourable court to guarantee his liberty as the 2nd Respondent investigations-if any continues.
 - m. That without the urgent intervention of this honourable court, the Applicant's rights to liberty will be curtailed and his medical condition might worsen if arrested and detained.
 - n. It would be in the interest of justice that the Applicant herein be granted anticipatory bail to protect his right pending the investigations, if any, are being done



- o. It would be in the interest of justice if this application shall be allowed as prayed.
 - p. No prejudice whatsoever shall be occasioned on the Respondent should the orders sought issued.
3. The relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interest of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The courts discretion in weighing these interest in the facts and circumstances of each individual case becomes crucial to ensure a just outcome. See *Pratibha Manchanda Vs. State of Haryana*, (2023) 8 SCC 181
 4. The considerations in this matter, which this court must weigh are the nature and seriousness of the offence the circumstances which are peculiar with the accused and the reasonable possibility that he or she might take flight out of the jurisdiction of this court. As rightly contended by the Applicant in his affidavit, the inference to be drawn is that the series of the chain of events demonstrate on the face of the record despite of him being summoned on and off to the police station is yet to be arraigned before any court of law. Adverting to the subject and reference cited a short question of general public importance is whether in granting anticipatory bail it will prejudice the investigation of any complaint which may have been lodged with the National Police Service. In my considered view, I do not think so that the accused's apprehension that he may be arrested is frivolous this application is only meant to impair police investigations. The right of the applicant to apply for a pre-arrest bail under Article 49 of *the constitution* is intrinsically linked to his right of being presumed innocent unless the contrary is proved and to his right to access the competent courts to avail him to remedies under the law. The right of the Applicant to protect his personal liberty within the contours of the bill of rights as envisaged in *the constitution* of Kenya cannot be under estimated.
 5. The scheme of the *Criminal Procedure Code* does not expressly provide for anticipatory bail that upon reading the provisions of *the constitution* more so Article 49 the spirit of the law is that pre-arrest bail is maintainable where compelling and substantial circumstances exists to grant the remedy within the framework of fundamental rights and freedoms. Keeping in view of the entire facts and circumstances of this case an order is hereby made to grant anticipatory bail quantified at 200,000 cognizance entered into by the Applicant without a surety. From the above pronouncement the Applicant shall cooperate with the police during the interim period if there are any ongoing investigations which purport to torch on his conduct. The police should not and must not venture to arrest the Applicant under the guise of conducting investigations. This order shall be served upon the National Police Service or the Director of National Police Service including the appropriate devolved units at the county level.
 6. Status Conference on 28.7.2025

DATED, SIGNED AND DELIVERED AT ELDORET THIS 15TH JULY 2025

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R. NYAKUNDI
JUDGE

