



**Rono v Republic (Miscellaneous Criminal Application
E030 of 2024) [2025] KEHC 9573 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9573 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ITEN
MISCELLANEOUS CRIMINAL APPLICATION E030 OF 2024**

JRA WANANDA, J

JULY 4, 2025

BETWEEN

ALICE JEBET RONO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before Court for determination is the Applicant’s undated Notice of Motion filed on 11/12/2024. It seeks orders as follows:
 - i. [.....] spent
 - ii. That the Honourable Court be pleased to grant the Applicant anticipatory bail and or bond on such terms as the Court shall deem fit for such a time as the Honourable Court shall direct or until such time a formal charge, if any may be filed against her in a Court of competent jurisdiction.
 - iii. That the Honourable Court may issue an order stopping the OCS Central Police Station from arresting her in connection with cases reported for the alleged offences reported against her and the ongoing mediation to be concluded before charging her in any Court of law.
 - iv. That the Honourable Court be pleased to order that all civil and criminal cases be referred to mediation in accordance with Article 159(2)(c) of the *Constitution* of Kenya, Civil Procedure Act, Criminal Procedure Act, Mediation Rules among all other provisions of the law.
 - v. That the Honourable Court direct that all parties to nominate mediators or default thereof mediators be appointed by the Court within 14 days.
 - vi. That any other orders this Court deems fit and just under the circumstances be granted.



- vii. That I be allowed to attend the hearing in person.
2. The Application is supported by the Affidavit sworn by the Applicant on 11/12/2024. She deponed that she was initially arrested, charged, convicted, and sentenced to serve 9 years in jail with the option of a fine of Kshs 1,400,000/- for 3 counts of issuing bad cheques contrary to Section 316(1)(a) of the *Penal Code* by Hon. Virginia Karanja at the Iten Magistrate's Court, that immediately after her conviction, she lodged an appeal, namely, Iten High Court Criminal Appeal No 18 of 2023, against both the conviction and sentence and the Court subsequently granted her a personal bond, which led to her release and set her at liberty pending the hearing and determination of the Appeal. She deponed that following her release on personal bond and after spending 3 years in prison, threats of arrest and coercive actions have been directed against her by various claimants through numerous claims filed at the Small Claims Court in Eldoret, Central Police Station in Eldoret, Iten Police Station, and the Chief's Office at Chepkanga, that on multiple occasions, the OCS Eldoret police station and Iten have harassed and threatened to arrest her without reasonable or lawful cause. She deponed further that one Mark Kwambai has lodged a claim of Kshs 1.6 million at the Iten Police Station, and Morris Kiplagat a claim of Kshs 4.5 million at the Eldoret Central police station, while Thomas Kipsang, Erick Kemboi and Peter Kipchoge have each filed civil suits in the Small Claims Court in Eldoret for the sums of Kshs 1.4 million, Kshs 370,000/- and Kshs 800,000/- respectively. She added that David Songok and Kuona Mbele Cooperative have also lodged claims of Kshs 1.2 million and Kshs 7 million, respectively, at the Central Police Station, among other claims, and that these amounts are ambiguous, and she wishes to be granted time to interrogate the claims and seek ways to resolve them amicably out of Court.
 3. She deponed further that the claims have culminated in numerous criminal and civil actions against her originating from a series of business transactions involving the supply of maize by several farmers on credit and that these farmers were subsequently supplied on credit by her to other purchasers, who eventually defaulted on the payment agreements, thus breaching the trust and business relationships built over time. She urged that she requires time to investigate these matters further, particularly to trace and hold those individuals who are yet to respond to pending criminal charges in various Courts and ensure the recovery of substantial amounts of money to offset all pending claims. She deponed further that she took loans of Kshs 3 Million from Equity Bank and Kshs 6 Million from Noble Sacco to finance the purchase and sale of maize, with the goal of building a sustainable business, that the financial institutions have since auctioned her property, including her land parcel number 77 at Mafuta Settlement Scheme, lodged as security for the loans, thereby exacerbating her financial difficulties. She added that numerous complainants have continued to visit her home and local police stations with threats of arrest which adds to her fear of further harassment and wrongful coercion and that these threats and claims have no legal or factual basis, and she reasonably fears that if they are acted upon, they will lead to irreparable harm, harassment, and undue mental distress. She urged that she has fully co-operated with all prior investigations and has no intention of evading the law or failing to comply with judicial processes.
 4. The Respondent did not file a specific response to the Application but did file, through Prosecution Counsel Ms. Mwangi, the written Submissions dated 25/02/2025. The Applicant also filed the written Submissions dated 2/03/2025.

Applicant's Submissions

5. The Applicant submitted that she seeks orders restraining her further harassment, intimidation, and psychological torture and cited Article 29(d) and Article 27 of the *Constitution*. She submitted that the core issue before Court is not just her own predicament but a fundamental question of justice and fairness, that despite her good faith efforts to resolve all disputes arising from her business transactions



through mediation, she has been subjected to repeated threats of arrest, unlawful, harassment through cases reported to various police stations and that this has caused her immense psychological distress and undermined her constitutional rights despite her resolve to have the matters resolved amicably through non-prosecution. She submitted that she seeks protection from actions that are not only unconstitutional but also in direct violation of well-established legal principles and jurisprudence on human dignity, due process, and the right to a fair hearing. The rest of the matters she submitted on are basically repetitions, save that the Applicant cited several authorities.

Respondent's Submissions

6. Prosecution Counsel, on her part, agreed that although there is no express provision in Kenyan law providing for anticipatory bail, an anticipatory bond may be given to a person pending their arrest, provided an Applicant demonstrates that his/her right to liberty is likely to be compromised or breached unlawfully by an organ of the State as enshrined in Article 258(1) and 165(3) (b) of the Constitution. She submitted that however, in this case, the Applicant has failed to demonstrate that her right to liberty is likely to be unlawfully breached by the police, or how her constitutional rights will be violated. She urged that the Applicant admits that the criminal and civil actions against her arose from a series of business transactions she had thus she cannot therefore claim that her constitutional rights have been violated yet she has admitted the existence of legal claims against her. Counsel submitted that orders that may hinder criminal investigations should be based on strong and constitutionally valid reasons, that granting the orders sought herein would amount to the Court interfering with the investigative authority vested in the Kenya Police Service. She urged that by applying for an anticipatory bond, the Applicant is pre-empting the outcome of the investigations as the investigations could either lead to her arrest or her release depending on the weight of the evidence gathered.
7. Counsel also submitted that from the Applicant's Supporting Affidavit, it is evident that there are multiple complaints against the Applicant in Eldoret and Iten police stations by different complainants but the cases however are still under investigation and are yet to be brought before Court and the Court cannot therefore order for mediation. She urged further that the Court cannot compel parties to mediate, that mediation is a voluntary process where both parties have to agree to pursue it and that the Applicant cannot therefore pray that the Court compels parties to mediate. She, too, cited several authorities.

Determination

8. The issues for determination herein can be summarized as follows:
 - i. Whether the Applicant is deserving of the relief of anticipatory bail suspending her arrest and criminal prosecution pending investigations, and also staying related civil legal proceedings
 - ii. Whether this Court should refer all cases, proceedings or complaints brought against the Applicant to mediation”.
9. There is no express provision governing anticipatory bail under Kenyan legislation. What the Constitution of Kenya provides for are the following:
 - a) Bail for arrested person under Article 49(1)(h)
 - b) Appropriate relief under Article 23(3) for breach of the Bill of Rights
10. Despite the absence of specific provisions on anticipatory bail in Kenya, it is agreed that the remedy is grantable in deserving cases. In such situations, the Courts have applied the threshold for an application for violation or threatened violation of rights under Article 23 and 165(3) of the Constitution. The



Courts have also invoked the provisions of Article 29 of the Constitution, which assures every person of the right to their freedom and security, which includes the right not to be – “(a) deprived of freedom arbitrarily or without just cause”.

11. The principles that should guide the Courts in considering whether to grant anticipatory bail were set out by Rawal and Kimaru, JJ, in the case of Samuel Muciri W’Njuguna v Republic [2004] eKLR, as follows:

“When a person is constantly subjected to harassment or is in fear of being unjustifiably arrested, he has a right to recourse to the protection of the Constitution through the High Court where its enforcement is provided for by the Constitution. It would indeed be a tragedy, if the Constitution did not provide a remedy to a citizen whose fundamental rights have been breached ... We are of the humble opinion that the right to anticipatory bail has to be called out when there are circumstances of serious breaches by an organ of the state of a citizen’s fundamental right.”

12. In the case of Njuguna v Republic Nairobi Misc. Cr. Case No 710 of 2002 1 KLR, the Court spelt out the purpose of anticipatory bail holding that it can be granted:

“When there are circumstances of serious breaches of a citizen’s rights by an organ of the state which is supposed to protect the same. It is also the object between the enactments of Article 49(h) of the Constitution”

13. In the case of Republic v Chief Magistrate Milimani & another Ex parte Tusker Mattresses Ltd & 3 others [2013] eKLR, Odunga J (as he then was), addressed the standard required in evaluation of an application for anticipatory bail 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 of 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.”

14. I have considered the Applicant’s case and it is my considered view that she has not proved that there has been any violation of her rights. Whereas she states that she has been charged with a similar offence in different cases, it is evident that these charges arise from different transactions. If charged in a criminal Court, as provided under Article 49(1)(h) of the Constitution, she will be eligible to be granted bail by the trial Court. Under Article 245(4) of the Constitution, the police have a constitutional mandate to investigate offences and prefer charges and the process of trial starts with a complaint being made to the police, investigations, arrest and arraignment in Court after which the suspect is formally charged and bail is considered. The Applicant has not explained why she should not be subjected through that process like every other suspect. My view is that the police are acting within their mandate. The



Applicant has not satisfied me that her rights are being violated in any way. Being a discretionary remedy, anticipatory bail is not granted as of right but on merit and discretion of which must also be exercised judiciously. It cannot issue where violation of rights has not been demonstrated. In dealing with an application of this nature, it is the duty of this Court to protect the rights and fundamental freedoms of Kenyans where need be, but the Court must also be alive to its obligation not to curtail the other organs of State from carrying out their constitutional mandate.

15. Ngenye-Macahria J (as she then was), in the case of *Mandiki Luyeye v Republic* [2015] eKLR, the Court held as follows:

“Similar sentiments were observed in the case of *Eric Mailu v Republic and 2 Others Misc. Criminal Application No 24 of 2013* in which it was emphasized that anticipatory bail would only issue when there was serious breach of a citizen’s rights by organs of the 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 of fundamental right must demonstrate the breach by acts and facts constituting the alleged breach”

16. Anticipatory bail ought not to therefore be granted to prohibit investigations or be sought with the intention of pre-empting the outcome of investigations, or on mere apprehensions, fear, rumours or mere feeling of inconvenience. Indeed, Mabeya J, in the case of *Richard Makhanu v Republic* (2014) eKLR, found as follows.

“With regard to the issue on anticipatory bail, it is usually granted where there is alleged to be serious breaches by a state organ. In the case of *W’Njuguna v Republic*, Nairobi Misc. Cr. Case No 710 of 2002, [2004] 1 KLR 520, the Court held that anticipatory bail can be granted:

“...when there are circumstances of serious breaches of a citizen’s rights by an organ of the state which is supposed to protect the same.”

In view of the foregoing, while the Applicant has submitted that he is in imminent danger of being arrested, I am not persuaded that the Applicant has demonstrated the likelihood of any serious breach of his rights by the police to warrant the granting of the orders sought. Indeed, the Applicant is entitled to equal protection before the law under the *Constitution*, but the actions of the police in investigating the complaint lodged by the Applicant’s wife is a lawful step, and cannot be said to violate the Applicant’s rights.”

17. The Applicant’s contention in this matter is that the Police have been harassing her in respect to alleged crimes arising out of various business transactions involving her. Other than making mere allegations, the Applicant did not provide any proof of such harassment. The Police are permitted by law to bring criminal charges against any person where merited, and unless an illegality is demonstrated, the Police, by undertaking investigations, are presumed to be carrying out their constitutional mandate and which cannot be curtailed by this Court without evidence of wrongdoing on their part. The Applicant, save for alleging apprehension of impending arrest, has not demonstrated any illegal or unlawful manner in which the Police might have discharged their mandate. In my view, the Applicant has failed to demonstrate that her right to liberty is likely to be unlawfully breached by the police, or how her constitutional rights will be violated. I agree with Prosecution Counsel Ms. Mwangi, that orders that may hinder criminal investigations must be based on strong and constitutionally valid



reasons. I therefore agree that granting the orders sought herein would amount to the Court interfering with the investigative authority vested in the Kenya Police Service, as no breach of the law by the police has been demonstrated.

18. What is even more interesting is that the Applicant is asking this Court to issue blanket orders that would also stop civil proceedings that are ongoing before the Small Claims Court and even complaints that are yet to be lodged formally. The Application is not only therefore limited to seeking suspension of criminal prosecution, but also civil proceedings and anticipated future complaints. Further, the Applicant is asking this Court to intervene and refer all the said proceedings or disputes to mediation. In effect therefore, the Applicant is asking this Court to compel all Plaintiffs and/or complainants to enter into mediation with the Applicant to explore the possibility of reaching out of Court settlements.
19. I agree with Ms. Mwangi that the Applicant, having admitted that the criminal and civil actions against her arose from a series of business transactions she engaged in, she cannot claim that her constitutional rights have been violated yet she has admitted the existence of legal claims against her. I also agree that by applying for an anticipatory bond, the Applicant is pre-empting the outcome of the investigations as the investigations could either lead to her arrest or her release depending on the weight of the evidence gathered. As also correctly submitted by Ms. Mwangi, from the Applicant's Supporting Affidavit, it is evident that there are multiple complaints against the Applicant in Eldoret and Iten police stations by different complainants but the cases are still under investigation and are yet to be brought before the criminal Courts. The issue of this Court ordering for mediation does not therefore even arise. Further, in any event, Courts cannot compel parties to pursue mediation in resolving their disputes, as mediation is a voluntary process in which both parties have to agree to engage in.
20. In any event, there is no evidence that the Applicant has even served or notified the said complainants or Plaintiffs, who are clear interested parties in this matter, of her filing of this Application. In effect therefore, this Court is being called upon to issue substantive orders that will adversely affect the interest of known parties without those parties being notified or availed the opportunity to be heard. Courts of law do not operate in such callous manner.

Final Orders:

21. In the end, I find this Application to be a clear abuse of the judicial process, and I swiftly dismiss it.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 4TH DAY OF JULY 2025

.....

WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

The Applicant (virtually)

Ms. Mwangi for the State

C/A: Brian Kimathi

