



**Akaran v Director of Criminal Investigations & another (Miscellaneous Criminal Application E210 of 2023) [2024] KEHC 1096 (KLR) (8 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1096 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS CRIMINAL APPLICATION E210 OF 2023**

**A. ONG'INJO, J**

**FEBRUARY 8, 2024**

**IN THE MATTER OF AN APPLICATION FOR  
ANTICIPATORY BAIL PENDING ARREST AND/OR CHARGE**

**AND**

**IN THE MATTER OF ARTICLES 10, 21(1), 22(1), 23, 28, 29, 47(2), 49(1), 159(2), AND 244(C)  
OF THE CONSTITUTION OF KENYA, SECTION 123 OF THE CRIMINAL PROCEDURE  
CODE, GENERAL PRINCIPLES OF NATURAL JUSTICE AND THE RULE OF LAW**

**BETWEEN**

**ETORE JOHN AKARAN..... APPLICANT**

**-V/S-**

**DIRECTOR OF CRIMINAL INVESTIGATIONS.....1ST RESPONDENT**

**INSPECTOR GENERAL OF POLICE.....2ND RESPONDENT**

**BETWEEN**

**ETORE JOHN AKARAN ..... APPLICANT**

**AND**

**DIRECTOR OF CRIMINAL INVESTIGATIONS ..... 1<sup>ST</sup> RESPONDENT**

**INSPECTOR GENERAL OF POLICE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant vide Notice of Motion application dated 29<sup>th</sup> November 2023 under Certificate of Urgency and the supporting affidavit thereto sworn by the applicant seeks that this honourable court be pleased to admit the applicant to anticipatory bail at reasonable terms.



2. The application was premised on grounds that the 1<sup>st</sup> Respondent has on many occasions summoned the applicant and compelled him to attend the Directorate for an unspecified reason and time frame causing the applicant unnecessary psychological anguish and anxiety. The applicant stated that he fears for his life but is willing to cooperate with the respondents if need be.
3. The applicant contends that he runs a non-governmental organization, Sheria na Haki Human Rights Institute, as the Executive Director which defends and protects the rights of the weak and the vulnerable, and that the organization deals with complaints on infringement of constitutional freedoms and rights.
4. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed Grounds of Opposition dated 19<sup>th</sup> January 2024 that the applicant has not met the threshold set for the court to grant anticipatory bail, that the applicant has not put before this court any iota of evidence that the applicant's fundamental rights have been infringed or there is a threat thereto, that the applicant has failed to demonstrate that he has been detained by the Respondents with respect to any charges or intended charges, or that he has been wrongfully charged with any offence by the respondents that warrant the interference of the court.
5. There is a delicate balance between protecting the rights and fundamental freedoms of Kenyans and ensuring other state organs carry out their constitutional mandate as was held in *Republic v Chief Magistrate Milimani & Another Ex parte Tusker Mattresses Limited & 3 Others* (2013) eKLR, it was held 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 other 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...., the High Court ought not to interfere with the investigative process conferred upon the police or the Director of Public Prosecutions unless cogent reasons are given for doing so.”

6. Additionally, in *Mandiki Luyeye v Republic* (2015) eKLR it was held that: -

“Similar sentiments were observed in the case of Eric Mailu Vs 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”.

7. This court has noted through a copy of the Certificate of Registration attached as an exhibit that the applicant herein is the Executive Director of a non-governmental organization running in the name and style of Sheria na Haki Human Rights Institute. However, the applicant has not provided sufficient proof of harassment allegations and this court does not find any iota of evidence that the Applicant's fundamental rights have been breached or denied or that there is a threat of them being infringed, contravened or violated.



8. The application herein therefore lacks merit and is dismissed.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,  
THIS 8<sup>TH</sup> DAY OF FEBRUARY 2024**

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

**In the presence of: -**

Ogwel- Court Assistant

Ms. Charo H/B for Mr. Egunza Advocate for the Applicant

Mr. Makuto present H/B for Ms. Rukiya for the Respondents

No appearance for Applicant

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

**Mr. Makuto:** I had raised issues with applicant. The applicant should be guided that it is only advocates who have authority to represent parties. Sheria na Haki is not a law firm to represent parties in court. The applicant ought to have filed an application in person.

**Ms. Charo:** I have noted Mr. Makuto's sentiments. I am not aware the firm of Mr. Egunza represented Applicant.

**Order:**

Sentiments by Mr. Makuto to be noted by applicants.

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

