



Echesa v Directorate of Criminal Investigations & 2 others (Criminal Application E101 of 2024) [2024] KEHC 3147 (KLR) (Crim) (3 April 2024) (Ruling)

Neutral citation: [2024] KEHC 3147 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL APPLICATION E101 OF 2024
DR KAVEDZA, J
APRIL 3, 2024**

BETWEEN

RASHID ECHESA APPLICANT

AND

DIRECTORATE OF CRIMINAL INVESTIGATIONS 1ST RESPONDENT

INSPECTOR GENERAL OF POLICE 2ND RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS 3RD RESPONDENT

RULING

1. The applicant, Rashid Echesa, has through a chamber summons application dated 2nd April 2024, and a notice of motion application of even date sought to be heard during recess (order now spent). The applicant's motion is supported by the affidavit sworn on 2nd April 2024.
2. The application is brought under Articles 10, 22, 23, 27, 28, 29, 47, 48, 49(1) g, (h), 50, 165(b) and 259 of the *constitution* and section 123 of the *criminal procedure code* whereby the applicant has sought to be admitted to bail or bond at such reasonable terms and conditions.
3. The applicant has further sought conservatory orders to restrain the respondents, their servants, agents, junior officers and or anybody from effecting and/or arresting, charging, harassing or otherwise however interfering with the applicant without conducting investigations and according him an opportunity to be heard pending hearing and determination of the application inter parties.
4. The motion is based on the grounds inter alia, that; the applicant was arrested while obeying lawful summons from the county criminal investigations officers (CCIO) Nairobi Area. Further, that the applicant is currently admitted in hospital in order to keep his medical condition in check, that his arrest was humiliating and seeks conservatory orders to prevent the continued and imminent



monumental abuse of power and that the applicant has never been summoned to appear before the investigative agencies and no arrest warrant had been issued prior to his arrest, hence, his arrest was not procedural and was unjustifiable and therefore in breach of due process.

5. At the outset, I wish to point out that arresting the applicant without a warrant of arrest having issued did not in anyway violate or infringe his constitutional rights as long as the investigating officer had reasonable ground to believe that the applicant had committed a cognizable offence. Additionally, there is no provision of law that provides that the applicant should have been summoned by the investigating officer prior to his arrest.
6. Having so stated, I wish to state that the duty of this court at this juncture is to protect the applicant's constitutional rights and fundamental freedoms guaranteed to all persons.
7. The right being threatened is provided under Article 29 of the constitution; freedom and security of all persons.
8. Article 49(i) 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.
9. 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 or infringed or is threatened
10. The aforementioned Articles do not discriminate the parties seeking such orders, and I dare say that such applicants may include those parties who have been arrested and are yet to be arraigned before a court of law.
11. However, before issuance of any orders, this court must be convinced that unless the orders sought are granted, the applicant's right to liberty will be infringed.
12. The applicant herein has averred that he was arrested on 27th March, 2024 and held incommunicado for 48 hours over allegations of self-abduction. The applicant believes that his arrest is politically motivated.
13. At this juncture it is not the duty of the court to interrogate whether the applicant's allegations are true, but rather, to protect his rights.
14. I am satisfied at this ex parte stage that unless the orders sought are granted, the applicant's rights to liberty under Article 29 of the [constitution](#) will be violated.
15. For the foregoing reasons, the court hereby issues orders in the following terms:
 - a. The applicant be and is hereby admitted to bail pending hearing of the application inter partes.
 - b. That the applicant to execute a personal bond of Kshs. 2,000,000/=.
 - c. That the applicant shall be escorted to the offices of the 1st respondent by his advocate as soon as he is discharged from hospital, and not later than the 22nd April, 2024, for interrogation and/or questioning and, he shall cooperate with the investigators during the entire period of investigations.
 - d. That pending hearing and determination of the application, the respondents, their servants, and/or agents, including law enforcement officers are restrained and prohibited from arresting or detaining the applicant.



- e. For the avoidance of doubt, the respondents are at liberty to investigate or charge the applicant for any criminal conduct. However, they shall not arrest or detain him in view of order (b) above or until further order of this court.
- f. Upon conclusion of investigations, the investigating officer shall notify the applicant to appear before the relevant court for plea.
- g. Upon arraignment, the orders of this court will automatically lapse, and the trial court will be at liberty to set new terms of bail.
- h. There shall be no further mention of this matter unless the orders of the court are disobeyed.
- i. File closed.

RULING DATED AND DELIVERED VIRTUALLY THIS 3RD DAY OF APRIL, 2024.

D. KAVEDZA

JUDGE

