



**Kosgey v Prosecution (Miscellaneous Criminal Application
E080 of 2022) [2024] KEHC 12246 (KLR) (11 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12246 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL APPLICATION E080 OF 2022
RN NYAKUNDI, J
OCTOBER 11, 2024**

BETWEEN

WILLY KIBOR KOSGEY APPLICANT

AND

PROSECUTION RESPONDENT

RULING

1. Before this court is a Notice of Motion dated 10th November, 2022 expressed to be brought under the provisions of Art. 22, 49(h) and 50 of the Constitution seeking the following orders:
 - a. Spent
 - b. This court be pleased to grant the applicant anticipatory bail on such reasonable conditions as the court may determine pending the conclusion of the investigations of criminal charges preferred against the applicant.
 - c. This court be pleased to issue such orders as may be fair and just to secure the applicant's constitutional rights not to be denied, violated or infringed or threatened.
2. The application is supported by 15 grounds and a corresponding supporting affidavit by the applicant. It is instructive to note that both counsels canvassed the application by way of written submissions.

The submissions by the applicant

3. Learned Counsel Mr. Oburu for the applicant in his quest to have the court exercise discretion and grant anticipatory bail to the applicant relied heavily on the following authorities: Article 47 of the Constitution and the principles in Republic v Chief Magistrate Milimani & another Ex parte Tusker Mattresses Lt & 3 others (2013) eKLR and W'Njuguna v Republic (2004) eKLR



Submissions for the Respondent

4. Learned Senior Prosecution Counsel for the state Mr. Mugun opposed the application primarily that it lacked merit and the support of the law. He placed reliance on the following authorities: *W'Njuguna (supra)*, *Mandiki Luyeye v Republic* (2015) eKLR, *Erick Mailu v Republic & 2 others* (2013) eKLR
5. I have considered the notice of motion, the affidavit evidence and subsequent submissions by both counsels. The cardinal issue for determination is whether the applicant has satisfied the criteria for anticipatory bail under Art. 49(1)(h) of the *Constitution*. It is noted that the *Constitution* does not mention the applicability of the doctrine of anticipatory bail but the provisions on the rights of an accused person makes drastic inroads into the fundamental rights of personal liberty guaranteed by the *Constitution* of Kenya.
6. The criminal procedure code also donates powers to the police to effect an arrest against any person whom a reasonable complaint has been made, credible information received or a reasonable suspicion exists of having committed a cognizable offence. The court therefore in exercising discretion to grant this remedy, certain parameters must be established on a balance of probabilities. That a cognizable offence has been committed by the applicant that requires the police to effect an arrest for an indictment for the alleged offence or for further investigation as to the circumstances of the complaint already lodged with the police. While granting bail, the court has to keep in mind the nature of accusation, the nature of evidence thereof, the severity of the punishment which conviction will entail the character of the suspect, circumstances which are peculiar to the suspect, reasonable possibility of securing the suspect at the trial and the larger interest of the public and other associated similar considerations.
7. As far as this application is concerned, none of the grounds is capable of establishing that exceptional circumstances exist for this court to grant an interim order for Grant for Anticipatory bail
8. The Notice of Motion dated November 10, 2022 is dismissed for lack of merit.

DATED AND SIGNED AT ELDORET THIS 11TH DAY OF OCTOBER, 2024

R. NYAKUNDI

JUDGE

