



Li & 3 others v Inspector General of Police & 4 others (Miscellaneous Criminal Application E168 of 2024) [2024] KEHC 12682 (KLR) (22 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12682 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
MISCELLANEOUS CRIMINAL APPLICATION E168 OF 2024**

**DR KAVEDZA, J
OCTOBER 22, 2024**

BETWEEN

**GE LI 1ST APPLICANT
HONGDONG CHEN 2ND APPLICANT
PENGFEI XU 3RD APPLICANT
HANMENG QUI 4TH APPLICANT**

AND

**INSPECTOR GENERAL OF POLICE 1ST RESPONDENT
REGIONAL CRIMINAL INVESTIGATING OFFICER NAIROBI
AREA 2ND RESPONDENT
OCS NAIROBI AREA POLICE HQ 3RD RESPONDENT
DIRECTORATE OF CRIMINAL INVESTIGATIONS 4TH RESPONDENT
BERNARD AMBOKO 5TH RESPONDENT**

RULING

1. The applicants have through a notice of motion dated 21st October 2024, filed under certificate of urgency sought to be admitted to anticipatory bail pending arrest or charge. The motion which is brought under Articles 19, 20,21, 22, 29, 48, 49, 50, 51, 159(1), 159(2), and 165 of the Constitution and Sections 123 of the Criminal Procedure Code is supported by the affidavit of the 1st applicant of even date.
2. The Applicants, named as the 8th, 12th, 13th, and 14th Defendants in HCCOMM/E485/2024, seek protection from what they claim are malicious and baseless allegations by Rabow Company Ltd. It was averred that Rabow accuses the applicants of fraudulently transferring Kshs. 49,977,830 from its



- Mpesa Pay-Bill account into accounts controlled by them. However, the Applicants assert that the disputed funds are legitimate winnings from the "Bangbet" betting platform, which Rabow operates, and which the company has unlawfully withheld.
3. The Applicants further state that Rabow lodged a complaint at Kilimani Police Station, leading to threats of imminent arrest by police under the command of Nairobi authorities. They deny any wrongdoing and argue that Rabow's actions are merely aimed at avoiding paying their rightful winnings. Additionally, they claim that their personal Mpesa statements were unlawfully accessed without their consent and have been used as evidence in the case against them thereby violating their privacy rights under Article 31 of the Kenyan *Constitution*. They claim that they intend to file a counterclaim for their unpaid winnings and challenge the illegal access to their personal data.
 4. The applicants emphasize that they were not aware neither were they informed of any ongoing criminal investigations until they were served with the civil pleadings (See: HCCOMM/E485/2024). They have expressed concern over the arrest of a co-defendant, Kexian Xiao, on 8th October 2024, and they fear that they may face similar treatment. Additionally, they are apprehensive of retaliatory actions, including arrests due to a court ruling delivered in the civil dispute on 26th October 2024, which barred Rabow from using the "Bangbet" brand name.
 5. They maintain their right to be presumed innocent and request the court to protect them from arrest or, at the very least, grant them bail. They affirm they have valid work permits, do not intend to flee Kenya, and have strong ties in the country. Furthermore, that without the court's intervention, they will suffer irreparable social, psychological, and economic harm.
 6. In dealing with an application of this nature, it is the constitutional duty of this court to go to the lengths and breadths of the constitution to protect the rights and fundamental freedoms where need be, but, it should be alive to its obligation not to curtail the other organs of state from carrying out their constitutional mandate. It is a very delicate balance of competing rights that this court is expected to carry out.
 7. The applicants before this court are seeking anticipatory bail. The applicants have averred that they are apprehensive that the police may use their powers to intimidate and harass them over a civil dispute.
 8. At this juncture, the duty of this court is not to interrogate whether the applicants' apprehensions are genuine but rather, to protect their constitutional rights and fundamental freedoms guaranteed to all persons.
 9. Article 49(1) 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. While the right to anticipatory bail or bond pending arrest is not specifically provided for by statute, there is no lacuna in the Constitution.
 10. 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, infringed, or threatened. The said article does not discriminate against parties seeking orders of anticipatory bail.
 11. Before issuance of such an order, the court must be convinced that the threat is real and not just mere apprehension. The applicants cannot for instance obtain an order of anticipatory bail by merely shouting "we fear my lord". They must demonstrate that unless the orders sought are granted by the court, their right to liberty will be infringed.



12. The applicants assert that they face an imminent risk of arrest due to an ongoing dispute with Rabow Company Limited. In support of the application, they have annexed the civil pleadings pending between the parties. They further state that one of their co-defendants has already been arrested and is currently awaiting a bail ruling. The applicants maintain that, unless the reliefs sought are granted, their rights will be unjustly curtailed.
13. At this ex parte stage, I am only supposed to be satisfied, which I am, that unless the orders sought are granted, the applicant's right to liberty under Article 29 of the Constitution will be compromised.
14. Having considered the application, the supporting affidavit of the applicant, and the annexure thereto, I hereby order as follows:
 - i. The application is certified urgent.
 - ii. The applicants herein are each admitted to anticipatory bail in the sum of Kenya Shillings One Hundred Thousand (Kshs. 100,000) to be deposited in court.
 - iii. For the avoidance of doubt, the respondents are at liberty to investigate or charge the applicants for any criminal conduct. However, they shall not arrest or detain the applicants in view of order (ii) above or until further orders of the court.
 - iv. The applicants' advocates are further directed to escort the applicants to the offices of the 1st, 2nd, 3rd, and 4th respondents for questioning and/or interrogation within 10 days from the date hereof and not later than 2nd November 2024.
 - v. Upon the conclusion of investigations, and if a decision to charge the applicants has been made, the 1st, 2nd, 3rd and 4th respondents shall not arrest or detain the applicants but they shall be informed of the court where they are to appear for plea taking.
 - vi. Order (v) shall remain in force until plea has been taken and the trial court has set new bail/bond terms in which case the orders of this court shall lapse.

RULING DATED AND DELIVERED IN THE ABSENCE OF PARTIES ON THIS 22ND DAY OF OCTOBER 2024.

D. KAVEDZA
JUDGE

