



Muriuki v Inspector General of Police & 5 others (Miscellaneous Criminal Application E253 of 2022) [2023] KEHC 2693 (KLR) (Crim) (2 February 2023) (Ruling)

Neutral citation: [2023] KEHC 2693 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E253 OF 2022
JM BWONWONG'A, J
FEBRUARY 2, 2023**

BETWEEN

JOEL MURIITHI MURIUKI APPLICANT

AND

INSPECTOR GENERAL OF POLICE 1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS 2ND RESPONDENT

INDEPENDENT POLICING OVERSIGHT AUTHORITY 3RD RESPONDENT

OCS OBAMA POLICE STATION 4TH RESPONDENT

CPL KIBOI 5TH RESPONDENT

CPL MUTEMBEI 6TH RESPONDENT

RULING

The case for the applicant

1. The applicant has filed a notice of motion dated September 8, 2022 pursuant to articles 22, 25, 28, 47 (2), 165 (3), and 244 (c) of the 2010 *Constitution of Kenya*, in which he seeks orders of anticipatory bond/bail on reasonable terms and conditions.
2. The grounds raised in support of the application are set out on the face of the notice of motion and are reiterated in his supporting affidavit dated September 8, 2022, and sworn by the applicant.
3. In his affidavit, the applicant has averred as follows. In April 2021, he entered into an oral tenancy agreement with Lucy Mathangu, a tenant. She fulfilled her tenancy obligations by paying rent from April 2021 to May 2022. Thereafter, she refused to pay rent on the basis that she had done some renovations on the premises. Subsequently, he disconnected her water and electricity.



4. The tenant reported the incident to the police and he started receiving threatening phone calls from policemen. He was summoned by the 5th respondent, who directed him to reconnect the electricity in his tenant's premises. When he refused, the 5th respondent became abusive and threatened to shoot him. He also threatened to prefer malicious charges against him and ordered him to pay his tenant Kshs 10,000 for the disturbance caused. He claimed that that the 5th respondent has been working in cahoots with the 6th respondent who made threatening calls to him.
5. It was the applicant's case that he believes his life is in danger having refused to comply with the summons issued by the police. Further, the matter is a civil dispute and as such the police lack the requisite jurisdiction.
6. He is apprehensive that unless the orders sought are granted, he is at risk of imminent arrest and prosecution on bogus charges. He intends to co-operate with any intended investigations and undertakes to present himself in court when requested.

The case for the respondents

7. In response to the application, the 2nd respondent filed grounds of opposition dated September 24, 2022. The grounds raised are as follows. The application is an abuse of the court process, the applicant has improperly invoked the jurisdiction of the court, anticipatory bail cannot be granted in a vacuum, the application is misconceived and is incompetent.
8. In a further response, CPL John Kemboi, the 5th respondent filed a replying affidavit dated September 22, 2022. In his affidavit, he has averred as follows. He is attached at Njiru Police Station. On August 6, 2022, a report was made at the station by Lucy Mathungu, who complained that the applicant had cut off her electricity and water supply. The same was booked as OB No 06/08/08/2022. On proceeding to the scene, he established the facts complained of. He called the applicant who promised to reconnect the amenities and also summoned him to the station. The applicant informed him that the dispute was pending before the area chief and the Assistant County Commissioner's Njiru.
9. He further averred that on August 26, 2022, Lucy Mathungu came back to the station and requested his statement be recorded. He informed her that he had no jurisdiction and the matter was being handled by the rent tribunal. He maintained that he did not take any further steps in the dispute. He denied threatening the applicant with a firearm or soliciting for Kshs 10,000.

The applicant's written submissions

10. The applicant submitted that he is apprehensive that the 3rd, 4th, and 5th respondents intend to arbitrarily arrest him on bogus charges. He cited articles 28 and 29 of the [*Constitution of Kenya, 2010*](#) which he claimed were being violated.

The 3rd respondent's written submissions

11. Ms. Salome Oyosi, learned counsel for the 3rd respondent submitted that the applicant had failed to show a reasonable cause of action against the 3rd respondent. Secondly, the applicant had not shown any cause of action against them. She argued from the pleadings and affidavit evidence the applicant has failed to show what specific cause the 3rd respondent should be defending in this matter. She prayed for the 3rd respondent to be struck off from the application for being wrongly enjoined.



Issues for determination

12. I have considered the application, the response and the submissions by the parties. The issue that arises for determination is whether the applicant has met the threshold for the grant of the orders.

Analysis and determination

13. In Kenya, there are no specific provisions on anticipatory bail save for the constitutional provisions under the Bill of Rights. The provisions of article 49 (1) (h) of the Constitution are clear that an arrested person has a right to be released on bail/bond pending a charge or trial unless there are compelling reasons. Under the Constitution and in particular articles 23, 29, and 258, the court is empowered to hear and determine applications relating to denial, violation, or infringement of or threat to a right or fundamental freedom in the bill of rights.
14. That the current Constitution protects the applicant from harassment by oppressive state organs is not in doubt. The court in W’Njuguna v Republic, Nairobi Misc Cr Case No 710 of 2002, [2004] 1 KLR 520, on the circumstances under which anticipatory bail can be given: -

“...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.”
15. The remedies permitted in article 23 of the Constitution as a whole are tailored toward addressing any infringement of right envisaged in cases where parties seek anticipatory bail especially due to the lack of a statutory framework for anticipatory bail.
16. In the instant application, the applicant contended that his right under article 29 on freedom and security of person and right to own property provided under article 40 has been infringed. He claimed that he had been summoned by the 5th and 6th respondents, who have threatened him with a firearm. Further, they even threatened to institute malicious charges against him. It is his case that the 5th and 6th respondents continue to harass him without any formal charge. He has made serious allegations that unless the court grants him the orders sought, he will continue to be harassed.
17. In rebuttal, the 5th respondent denied harassing the applicant. He stated that he only summoned him to the station on inquiry after a complaint had been made against him. He denied threatening him or soliciting money from him.
18. Anticipatory bail requires courts to ensure that interference with the functions of other bodies and institutions established by law either by statute or the Constitution of Kenya, is only on cogent and robust reasons. Proof of violation, infringement, threat, or violation of a person’s right under the Constitution of Kenya is required.
19. Taking all matters in the case before me into consideration, all that the applicant has confirmed is that a complaint was made against him and a statement was recorded. He was summoned by the police to address the complaint and gave his response.
20. The 5th respondent confirmed that investigations in the matter have since closed. He is therefore not at risk of arrest concerning the particular complaint.
21. In the premises, I am not persuaded that the applicant has demonstrated the presence of a serious breach of his rights by the respondents to warrant the granting of anticipatory bail.
22. I find the instant application to be without merit and I accordingly dismiss it with no order as to costs.



RULING SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 2ND DAY OF FEBRUARY 2023.

J M BWONWONG'A

JUDGE

In the presence of-

Mr. Kinyua: Court Assistant

Mr. Muchiri for the applicant

Ms Oduor for the respondent

Mr. Langat holding brief for Ms Oyosi for 3rd Respondent

