



Gathomi & 4 others v Director of Criminal Investigations & 2 others (Miscellaneous Criminal Application E010 of 2023) [2023] KEHC 20686 (KLR) (23 May 2023) (Ruling)

Neutral citation: [2023] KEHC 20686 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
MISCELLANEOUS CRIMINAL APPLICATION E010 OF 2023**

LW GITARI, J

MAY 23, 2023

**IN THE MATTER OF ARTICLES 2,19,20,2022,23,25,27,29,47,48,49,50,258,259 AND
260 OF THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF LIBERTY, FREEDOM AND SECURITY OF PERSONS

BETWEEN

**GETRUDE GATHOMI 1ST APPLICANT
JAMES MWENDWA 2ND APPLICANT
JAMES MUGAMBI 3RD APPLICANT
KENETH MURITHI 4TH APPLICANT
ERICK MICHENI MBAKA 5TH APPLICANT**

AND

**DIRECTOR OF CRIMINAL INVESTIGATIONS 1ST RESPONDENT
INSPECTOR GENERAL NATIONAL POLICE SERVICE 2ND RESPONDENT
DIRECTOR OF PUBLIC PROSECUTION 3RD RESPONDENT**

RULING

1. The applicants have filed the application dated 4/5/2023 seeking orders inter-alia that they be admitted to anticipatory bail or bond pending the hearing and determination of this application. The counsel for the applicant has urged this court to grant them bail as the purpose of the application may be defeated. The counsel further submits that the 3rd respondent has directed the police to arrest the applicants. The respondent has also stated that granting the application will not defeat the purpose of the application.



2. I have considered the application and the affidavit in support. It has been held that anticipatory bail is a special relief in criminal cases and the core, character and the scope of the bail may be problematic requiring a careful stitching of the relief, see Gikonyo J in *Paul Ole Kuyana v Director of Public Prosecutions and 2 others*. There are no specific provisions for granting the anticipatory bail save for the Constitutional provisions under the Bill of Rights. Article 23 of the *Constitution* gives this court authority to uphold and enforce the Bill of Rights. Article 23(3) lays down the reliefs which the court may grant when considering applications and petitions under article 22 of the *Constitution* which deals with the enforcement of the Bill of Rights. These includes among others, an injunction and conservatory orders.
3. In an application of this nature, the court consider whether the rights of applicant are likely to be violated or where there is a threat of violation of the rights. This court has jurisdiction under article 165 (3) of the *Constitution* this court has discretion to determine whether a right or fundamental freedom in the bill of Rights have been denied or threatened, violated and or infringed.
4. In this case I have considered the averments in the affidavit of Getrude Kathomi who has deponed that she is a complainant in Criminal Case No.594/2022. Despite that the D.P.P has ordered that the applicants be arrested and charged. I note that at this stage the State has not responded to the allegations. I however note that the applicants' rights to liberty are threatened. They may be arrested at any time if anticipatory bail is not granted pending the hearing and determination of this application. The respondent is not likely to suffer any prejudice. In the circumstances I order that the applicants shall execute a bond of Kshs.300,000/- pending the hearing and determination of this application. The anticipatory bail to last for a period of three months. The applicants shall not be arrested if required to appear in court, they shall be served with summons through their advocate.

Order:

5. Hearing of the application to proceed on 17/7/2023.

L.W. GITARI

JUDGE

23/5/2023

