



**Ngumi v Ethics and Anti-Corruption Commission & another (Miscellaneous Case E146 of 2023) [2023] KEHC 4073 (KLR) (Crim) (9 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 4073 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
MISCELLANEOUS CASE E146 OF 2023  
DR KAVEDZA, J  
MAY 9, 2023**

**BETWEEN**

**JOHN NGUMI ..... APPLICANT**

**AND**

**ETHICS AND ANTI-CORRUPTION COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTION ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant vide an originating Notice of Motion application dated May 4, 2023 and supporting affidavit of even date sworn by John Ngumi filed a certificate of urgency under Articles 2, 19, 20, 23, 25, 27, 29, 47, 48, 49, 50, 258, 259 and 260 of the Constitution praying for anticipatory bail or bond pending hearing and determination of the application.
2. The applicant further sought conservatory orders restraining the respondents, their servants, agents, officers and/ or anybody acting under their authority from effecting and/ or arresting, detaining in custody, charging, harassing or otherwise interfering with the liberty and fundamental freedoms of the applicant. Annexed to the application are a number of documents in support thereof.
3. The applicant in his supporting affidavit has averred that the 1<sup>st</sup> respondent has commenced investigations into the theft of Kshs 6 billion against him. He has also averred that the investigations into the alleged theft are targeting persons perceived to be close to the former president Uhuru Kenyatta, including himself. He has further averred that there has been sustained malicious media campaign profiling the applicant as an ally of the former president and the 'blue eyed boy' of the former government, aimed at creating public outrage against him, and pointing a target on him for easy picking by the 1<sup>st</sup> Respondent.



4. The applicant states that he is under an active threat of arrest and prosecution which would jeopardize his reputation as one of Kenya's most celebrated bankers.
5. The application before court is one which attempts to prevent a citizen from contemplated loss of the citizen's fundamental right and freedom. In this case, the applicant alleges that the powers of the respondents and the Kenya police are being abused and misused to harass, intimidate and oppress him owing to his previous appointment by H E Uhuru Kenyatta, the former President and to achieve extraneous political purposes unconnected with upholding the Rule of Law. If that is the correct position, then the applicant is protected under Chapter 4 of the Constitution, which guarantees rights and fundamental freedoms to all persons.
6. In this case it is clear that the right being threatened is a right provided under Article 29 of the Constitution; Freedom and security of every person.
7. Article 49(1)(h) states that an arrested person has the right (h) 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. The constitution is supposed to be interpreted broadly and in a manner that favours the enforcement of a right or fundamental freedom. Additionally, the constitution has to be interpreted in a holistic manner and as integrated whole. The question to be determined at this ex parte stage is whether, the applicant has demonstrated that his right to liberty is likely to be compromised or breached unlawfully by the organ of the state that is supposed to protect this right.
8. Having carefully analyzed the application, the supporting affidavit and the annexures thereto, I am satisfied that the applicant has established a case for anticipatory bail pending arrest. I therefore issue orders as follows:-
  - a. The application be and is hereby certified as urgent.
  - b. The applicant John Ngumi is admitted to anticipatory bail in the following terms:-
    - i. The applicant is granted personal bond of Kshs 500,000/=.
    - ii. Pending the hearing and determination of this application the respondents, their servants, agents, including law enforcement are restrained from arresting, detaining or harassing the applicant.
    - iii. The applicant shall as soon as possible be escorted by his counsel to the Ethics and Anti corruption commission offices so that he maybe be interviewed.
    - iv. The applicant shall cooperate with the officers during the period of investigations.
    - v. The application and the orders of this court shall be served upon the respondents for interparties mention of the on May 23, 2023.

**RULING READ AND DELIVERED ON 9<sup>TH</sup> DAY OF MAY, 2023**

---

**HON. DIANA R. KAVEDZA**

**JUDGE**

