



**Ngumi v Ethics and Anti-Corruption Commission & another (Miscellaneous Case E206 of 2023) [2023] KEHC 18487 (KLR) (Crim) (5 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18487 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
MISCELLANEOUS CASE E206 OF 2023  
DR KAVEDZA, J  
JUNE 5, 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, John Ngumi, has through an originating notice of motion application dated May 4, 2023 sought protection of this court against the 1<sup>st</sup> Respondent, Ethics and Anticorruption Commission and the 2<sup>nd</sup> respondent, the Director of Public Prosecutions. The motion is supported by the affidavit of the applicant and a certificate of urgency of even date.
2. It is intrinsic to note that this court issued similar orders being sought by the applicant on May 9, 2023 in Miscellaneous Application No. E146 of 2023. The application is brought under articles 10, 22, 23, 25, 27, 29, 47, 49(1), 50, 258, 259 and 260. The applicant has sought to be admitted to anticipatory bail or bond.
3. Secondly, the applicant has sought conservatory orders to restrain the respondents, their servants, agents, officers and/ or anybody acting under their authority, from affecting and/or arresting, detaining in custody, charging, harassing or otherwise interfering with the liberty and fundamental freedoms of the applicant pending hearing and determination of the application inter parties.
4. The motion is based on the grounds, inter alia, that: the respondents have commenced investigations into the theft of Kshs. 6 billion, and that, the said investigations are targeting people perceived to be close to the former President, Uhuru Kenyatta, including the applicant herein. Further, that there has



been a 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 the applicant, in order to justify a criminal investigation against him by the 1<sup>st</sup> respondent.

5. The application before court seeks to prevent violation of the applicant’s rights and fundamental freedoms. The applicant has averred that the powers of the police are being misused to harass, intimidate and oppress him owing to his alleged association with the former President H. E Uhuru Kenyatta.
6. Further the applicant has averred that the harassment is aimed at settling political scores and not for the purpose of the rule of law.
7. At this juncture, the duty of this court is not to interrogate whether the applicants’ allegations are true, but rather, to protect his constitutional rights and fundamental freedoms guaranteed to all persons.
8. Having gone through the originating notice of motion and the supporting affidavit of the applicant, it is clear that the right being threatened is a right provided in article 29 of *the Constitution*; Freedom and security of every person.
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 or infringed or is threatened. The said Article does not discriminate 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. A party cannot for instance obtain an order of anticipatory bail by merely shouting that “I fear my lord”. He must demonstrate that unless the orders sought are granted by the court, his right to liberty will be infringed.
12. The applicant herein has alleged that the respondents have threatened to arrest him based on extraneous and political reasons other than the rule of law, and, has annexed documentary evidence in support of the said application.
13. At this ex parte stage, I am satisfied that unless the orders sought are granted, the applicant’s right to liberty under article 29 of *the Constitution* will be compromised.
14. For the foregoing reasons, the court hereby issues an order of anticipatory bail to the applicant in the following terms:
  1. The applicant be and is hereby admitted to anticipatory bail pending hearing of the application inter partes.
  2. That the applicant to execute a personal bond of Kshs. 2,000,000/=.
  3. That the applicant shall be escorted to the offices of the 1<sup>st</sup> respondent by his advocate as soon as possible for interrogation and/or questioning and, he shall cooperate with the investigators during the entire period of investigations.



4. That pending hearing and determination of the application, the respondents, their servants, and/or agents, including law enforcement officers are restrained and prohibited from arresting, detaining or harassing the applicant.
5. The application and the orders of this court shall be served upon the respondents for inter partes mention on 26.7.2023.

**Ruling dated, signed and delivered electronically this 5<sup>th</sup> day of JUNE, 2023**

**HON. D. KAVEDZA**

**JUDGE**

Page 2 of 2

**HCCRMISCAPP E206 OF 2023 – RULING**

