



Aladwa & 2 others v Inspector General of Police & 2 others (Criminal Miscellaneous Application E273 of 2023) [2023] KEHC 20589 (KLR) (Crim) (21 July 2023) (Ruling)

Neutral citation: [2023] KEHC 20589 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL MISCELLANEOUS APPLICATION E273 OF 2023
DR KAVEDZA, J
JULY 21, 2023**

BETWEEN

**GEORGE ALADWA 1ST APPLICANT
PETER IMWATOK JATESO 2ND APPLICANT
MOSES OGETO NYANGARESI 3RD APPLICANT**

AND

**INSPECTOR GENERAL OF POLICE 1ST RESPONDENT
DIRECTOR OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT
ATTORNEY GENERAL 3RD RESPONDENT**

RULING

1. The applicants, George Aladwa, Peter Imwatoka and Moses Ogeto have filed a Notice of Motion application dated July 20, 2023, under certificate of urgency. The application is brought under Articles 19, 20, 21, 22, 23, 24, 28, 29, 37, 48, 49 and 159 of the Constitution of Kenya. The application is supported by the jointly sworn affidavit of the applicants deponed on July 20, 2023.
2. The applicants have sought a conservatory order to issue restraining the respondents, their servants, agents, junior officers and/or anybody from arresting, detaining, harassing and or otherwise interfering with the liberty of the applicants herein in relation to their exercise of their constitutional right to assemble, picket demonstrate and their freedom of expression on 18th and July 19, 2023.
3. The motion is based on the grounds, inter alia, that: the applicants are currently in hiding following credible reports that the officers of the 1st and 2nd respondents are hot in their pursuit with an intention



to arbitrarily arrest them on trumped up charges arising from their exercise of their constitutional right to assemble, picket and demonstrate and their freedom of expression on 18th and July 19, 2023.

4. Although the applicant has listed various articles of the Constitution, I do note that anticipatory bail is not specifically provided for under the Constitution. However, the Constitution mandates the government to protect and respect the rights of all Kenyans, this includes the right to liberty.
5. Notwithstanding that the application is yet to be served upon the respondents, this court is not divested of jurisdiction to grant the orders being sought at the ex-parte stage. The reason being that 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 any citizen of this country.
6. I take judicial notice that the applicants are Public servants serving as a Member of Parliament and Members of the Nairobi County Assembly, hence they are unlikely to abscond from the jurisdiction of this court if released on bond/ bail.
7. Having considered the notice of motion application, the affidavit of the applicants and the annexures, I am satisfied that the application is merited and issue the following orders:
 - a. I certify the application urgent.
 - b. That the applicants are admitted to anticipatory bail in the sum of **Kenya Shillings One Hundred Thousand (Kshs 100,000)** to be deposited in court.
 - c. That for the avoidance of doubt, the 1st and 2nd respondents are at liberty to investigate or charge the applicant for any Criminal Conduct. However, they shall not arrest them (unless the applicants fail to honour their summons) and they shall not detain them in view of order (b) above or until further orders of the court.
 - d. That for further avoidance of doubt, and upon such investigations the DPP will be at liberty to present any charge against the applicants in any court; and such trial court will be at liberty to set any new terms of bail or determine whether or not to grant bail.
 - e. That the application and the order of this court shall be served upon the respondents within 3 days from the date hereof and the respondents shall upon service file their responses within 10 days.
 - f. That this matter be mentioned on September 26, 2023 for directions.

Ruling dated and delivered in absence of parties on this **21st** day of **JULY 2023**.

D. KAVEDZA

JUDGE

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