



Owino v Inspector General of Police & 4 others (Miscellaneous Case E264 & E265 of 2023 (Consolidated)) [2023] KEHC 20578 (KLR) (21 July 2023) (Ruling)

Neutral citation: [2023] KEHC 20578 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
MISCELLANEOUS CASE E264 & E265 OF 2023 (CONSOLIDATED)**

DR KAVEDZA, J

JULY 21, 2023

BETWEEN

HON. PAUL ONGILI BABU OWINO APPLICANT

AND

INSPECTOR GENERAL OF POLICE 1ST RESPONDENT

DIRECTORATE OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT

JOMO KENYATTA AIRPORT POLICE STATION 3RD RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS 4TH RESPONDENT

THE HON ATTORNEY GENERAL 5TH RESPONDENT

RULING

1. The applicant, Hon. Paul Ongili Babu Owino, has through his counsel Danstan Omari and Okatch and Partners filed Chamber Summons applications dated July 19, 2023.
2. Although the applicant has filed two separate applications, both applications are brought under the same provisions of law (Article 25(d), 27, 49(1)(a)(i), (f)(i) and h and 51(2), 159 and 259 of the [Constitution of Kenya](#), sections 123 and 389(1) of the [Criminal Procedure Code](#) and Rule 3 of the [Criminal Procedure](#) (Directions in the nature of Habeas Corpus), they seek the same orders to wit:
 - a. That the application herewith be certified as extremely urgent and service be dispensed with and it be heard *ex-parte* in the first instance.
 - b. That an order that directions in the nature of habeas corpus do issue directed to the respondents herein to have the applicant be produced before this Honourable Court at such time as the Judge may direct.



- c. That an order do issue to the 1st respondent and/or his representatives appear in person or by his duly authorized agents together with the original of any warrant or order of detention to show cause why the applicant should not be released forthwith.
 - d. That the 1st, 2nd and 3rd respondents herein or any other Officer in charge of the Police in the jurisdiction where the Applicant is being held be ordered or directed to release the applicant on bail or on such terms and conditions as this court deems fit to grant.
 - e. That the costs of this application be provided for.
3. For the purpose of this ruling, I shall consolidate both chamber summons applications dated July 19, 2023 as supported by the annexed affidavits sworn by Duncan Okatch and Danstan Omari Advocates for the applicant. Both learned counsel have averred in the affidavits that:
 - a. The applicant herein was forcefully arrested by officers of the 1st, 2nd and 3rd respondents at Jomo Kenyatta International Airport on the 19th day of July, 2023 upon arriving in Nairobi from Mombasa.
 - b. The applicant was bungled up and taken to an unknown location/destination by the said officers and all efforts to trace him at several police stations within Nairobi have proved futile. As such, his whereabouts remain undetermined.
 - c. The said arrest and detention occurred in the morning of the first day of the three-day nationwide peaceful demonstrations organized by the Azimio One Kenya Alliance, in which the applicant is a fervent member and it was a notorious fact that the applicant intended to take part in the said demonstrations.
 - d. Article 37 of the [Constitution of Kenya, 2010](#) guarantees that every person has the right, peaceably and unarmed, to assemble, demonstrate and to present petitions to public authorities and as such, the applicant's detention is unlawful, illegal and affront to his rights.
 - e. Despite being a member of the opposition, the applicant is still entitled to equal protection and benefit of the law by dint of Article 27 of the [Constitution](#).
 - f. No prejudice will be suffered by the respondents herein if indeed the orders sought in this application are granted as prayed.
4. 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.
5. Moreover, 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 persons not to be released.
6. At this juncture, the duty of this court is not to interrogate whether the applicant's allegations are true, but rather, to protect his constitutional rights and fundamental freedoms guaranteed to all persons. The applicant bears the duty to establish before this court that he has been deprived of his liberty contrary to the law.
7. I nonetheless take judicial notice that the applicant was arraigned before the Chief Magistrate Milimani Law Courts on July 20, 2023 and charged with various criminal offences.



8. However, with respect to the prayer for the applicant be released on bond, it is widely known that the applicant is a Member of Parliament, hence he is unlikely to abscond from the jurisdiction of this court if released on bond/ bail.
9. For the foregoing reasons, and in the interest of Justice, I order as follows:
 - a. The applicant be and is hereby admitted to a cash bail of Kenya Shillings One Hundred Thousand (Kshs. 100,000/=) to be deposited with the Officer Commanding Station (OCS) of the relevant police station and further order as follows:
 - b. That the application and order of this court be served upon the respondents within 3 working days.
 - c. Upon service, the respondents to file a response within 14 days.
 - d. This matter shall be mentioned on September 26, 2023 for directions.

RULING DATED AND DELIVERED VIRTUALLY IN ABSENCE OF PARTIES THIS 21ST DAY OF JULY 2023.

D. KAVEDZA

JUDGE

