



**Atieno v Director General Directorate of Criminal Investigations & 3 others
(Petition E014 of 2024) [2024] KEHC 13873 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13873 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
PETITION E014 OF 2024
DR KAVEDZA, J
NOVEMBER 7, 2024**

BETWEEN

NOVECLAIRE ATIENO APPLICANT

AND

**DIRECTOR GENERAL DIRECTORATE OF CRIMINAL INVESTIGATIONS 1ST
RESPONDENT**

DIRECTOR OF PUBLIC PROSECUTIONS 2ND RESPONDENT

BENSON KASYOKI 3RD RESPONDENT

ISAAC KARIUKI 4TH RESPONDENT

RULING

1. The applicant filed the present notice of motion dated 6th November 2024 pursuant to Articles 19, 22, 23, 27, 28, 29, 48, 49, 50, 243, 244, 245 & 258 of the [Constitution](#) of Kenya, Sections 3A of the [Civil Procedure Act](#), and enabling provisions of the law. The applicant prayed that pending inter parties hearing of this application, the court do issue conservatory orders restraining the respondents by themselves or through their agents, servants' employees, officers, proxies, or anybody acting under them from summoning, detaining, interrogating, charging, prosecuting, or in any other manner harassing, intimidating, torturing, vilifying, or in any other way interfering with the applicant's liberty and/or security in connection with the facts forming the subject matter of this suit. Further, pending the hearing and determination of this application and the petition, this Honourable Court be pleased to issue conservatory orders restraining the respondents by themselves or through their agents, servants' employees, officers, or proxies from summoning, detaining, interrogating, charging, prosecuting, or in any other way harassing, intimidating, torturing, vilifying or interfering with the applicant's liberty or security in connection with the facts forming the subject matter of this dispute. Finally, pending



- the hearing and determination of this application and the petition, the applicant be admitted to anticipatory bail on such terms as this honourable court will deem proper.
2. In the affidavit in support of the application and petition, the applicant avers that she is a financial administrator. She claims that in 2021, she assisted Ralph Edward Nguma in filing Kenya Revenue Authority (KRA) tax returns. The applicant filed NIL returns and generated a payment slip for penalties. Ralph paid the penalty using his own mobile device. Afterward, the applicant advised Ralph to change his password, ending their involvement.
 3. In October 2024, the applicant received a summons from the Nairobi Area Police Station to record a statement. Upon reporting, the applicant alleges the 4th Respondent insisted they fabricate a statement implicating a third party, Japheth Change, in accessing Ralph's KRA account. The applicant claims the 4th Respondent attempted to coerce him into recording false information under threat of detention and prosecution and stated these instructions came from the 3rd Respondent.
 4. The 4th Respondent then detained the applicant for a full day, isolated and threatened her, and pressured them to adopt the Respondents' version of events rather than record her true statement. The applicant's Advocate, Dr. Jotham Okome Arwa, reportedly sought clarification on the charges, to which the 5th respondent asserted the applicant's prior access to Ralph's KRA account in 2021 as grounds for suspicion, despite KRA passwords expiring annually and no evidence of interference.
 5. The applicant argues that this reasoning lacks credibility, given that there is no proof linking him or Japheth to any subsequent access to Ralph's account. Moreover, the applicant claims the 4th Respondent admitted knowing of her innocence but threatened that she would face no consequences if she complied by implicating Japheth Change.
 6. The applicant further states that she was released on cash bail on 30th October 2024, with instructions to return on 12th November 2024 to record the demanded statements, under threat of prosecution. The applicant asserts that the actions of the 3rd and 4th Respondents represent a gross abuse of power, meant solely to harass, intimidate, and extort, rather than to investigate a genuine offence. This conduct, the applicant argues, is a violation of his rights and an exploitation of the criminal justice system for personal motives.
 7. The applicant argues that even if all the allegations against her were true, they would not amount to an offence. She challenges the Respondents to present evidence linking her to any crime. She accuses the 3rd and 4th Respondents of acting in bad faith, using their positions as public servants to pursue personal vendettas.
 8. The applicant contends that if the application is not granted, the Respondents will continue their abuse of power by initiating false criminal charges against her. This would constitute a misuse of the criminal justice system, waste court resources, and bring the legal process into disrepute, as the proceedings would be without merit from the outset.
 9. In dealing with an application of this nature, it is the constitutional duty of this court to go to the lengths and breadths of the constitution to protect the rights and fundamental freedoms where need be, but, it should be alive to its obligation not to curtail the other organs of state from carrying out their constitutional mandate. It is a very delicate balance of competing rights that this court is expected to carry out.
 10. The applicant before this court is seeking conservatory orders and anticipatory bail pending hearing and determination of the application and petition on record. She has averred that she faces intimidation and harassment from the respondents who are attempting to coerce her to incriminate a third party. She is apprehensive that she may be prosecuted on a matter arising from false criminal charges.



11. At this juncture, the duty of this court is not to interrogate whether the applicant's apprehension is genuine but genuine but rather, to protect her constitutional rights and fundamental freedoms guaranteed to all persons.
12. 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. While the right to anticipatory bail or bond pending arrest is not specifically provided for by statute, there is no lacuna in the Constitution.
13. 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, infringed, or threatened. The said article does not discriminate against parties seeking conservatory orders against those they are accusing of violating their rights and orders of anticipatory bail.
14. Before issuance of such an order, the court must be convinced that the threat is real and not just mere apprehension. The applicant must demonstrate that unless the orders sought are granted by the court, her right to liberty and equal protection and benefit of the law.
15. The applicant maintains that the continued harassment is an abuse of the powers conferred by the constitution. The applicant maintains that, unless the reliefs sought are granted, her rights will be unjustly curtailed.
16. At this ex parte stage, I am only supposed to be satisfied, which I am, that unless the orders sought are granted, the applicant's right to liberty and equal protection of the law under the Constitution will be compromised.
17. Having considered the application, the supporting affidavit of the applicant, and the annexure thereto, I hereby order as follows:
 - i. The application is certified urgent.
 - ii. Pending hearing and determination of this application and the petition, the respondents by themselves or through their agents, servants' employees, officers, proxies, or anybody acting under them are restrained from summoning, detaining, interrogating, charging, prosecuting, or in any other manner harassing, intimidating, torturing, vilifying or in any other way interfering with the applicant's liberty and/or security.
 - iii. The applicant/petitioner is admitted to anticipatory bail in the sum of Kenya Shillings One Hundred Thousand (Kshs. 100,000) to be deposited in court.
 - iv. The applicant/petitioner shall serve the application and the petition on record within three (3) days from the date hereof.
 - v. Upon service, the respondents shall file a response within seven (7) days from the date hereof.
 - vi. The application shall be heard virtually on 19th November 2024.

RULING DATED AND DELIVERED IN THE ABSENCE OF PARTIES ON THIS 7TH NOVEMBER 2024.

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D. KAVEDZA

JUDGE

