



**Ibrahim t/a Abdirazak & Company Advocates v Director of Public Prosecutions & 2 others; Mohamed & 2 others (Interested Parties) (Miscellaneous Criminal Application E188 of 2024) [2024] KEHC 14414 (KLR) (Crim) (21 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14414 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
MISCELLANEOUS CRIMINAL APPLICATION E188 OF 2024  
DR KAVEDZA, J  
NOVEMBER 21, 2024**

**BETWEEN**

**ABDIRAZAK MOHAMED IBRAHIM T/A ABDIRAZAK & COMPANY  
ADVOCATES ..... APPLICANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... 1<sup>ST</sup> RESPONDENT  
INSPECTOR GENERAL OF POLICE ..... 2<sup>ND</sup> RESPONDENT  
DIRECTOR OF CRIMINAL INVESTIGATIONS ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**HUSSEIN IBRAHIM MOHAMED ..... INTERESTED PARTY  
ZAINABESHI HASSAN DEBEBE ..... INTERESTED PARTY  
FENOON STAR REAL ESTATE & CONTRACTING LIMITED .... INTERESTED PARTY**

**RULING**

1. The applicant has filed the present notice of motion dated 20<sup>th</sup> November 2024 seeking orders of anticipatory bail. The application is supported by an affidavit sworn by the applicant of similar date.
2. The grounds in support of the application are as follows: The Applicant was instructed to act for the 1st Interested Party in the conveyance of the property known as Nairobi/Block/104/389. Prior to this, the 1st Interested Party had engaged Wachira & Mumbi Advocates, who prepared a sale agreement for the property between the 1st and 3rd Interested Parties.



3. The Applicant's role was limited to acting as legal counsel for the vendor, the 1st Interested Party. Subsequently, the 3rd Interested Party lodged a complaint against the 1st Interested Party seeking a refund of monies advanced in relation to the transaction. Since 2022, the Applicant has been repeatedly summoned by the 2nd and 3rd Respondents to provide an account of the transaction. Despite honouring the summons and cooperating fully, individuals believed to be officers of the 2nd and/or 3rd Respondents have been trailing and stalking the Applicant at his workplace and in public offices, creating the urgency for this application.
4. The 2nd and 3rd Respondents have, on several occasions, demonstrated their intent to arrest the Applicant through conduct and implied threats, including physical harassment and continued summons since 2022. When the Applicant has been unable to comply with such summons, threats of imminent arrest have ensued. The Applicant fears being wrongfully arrested and unlawfully charged based on fabricated allegations by the 2nd and 3rd Respondents in collusion with the 3rd Interested Party.
5. The alleged offence under investigation (if any), obtaining money by false pretences, is a bailable offence, and the Respondents would suffer no prejudice if the orders sought are granted.
6. Despite numerous complaints lodged by the Applicant with the 1st Respondent regarding the Respondents' conduct during investigations, no response has been received, and the complaints have been ignored.
7. The Applicant therefore seeks the intervention of this Honourable Court to protect his rights, having acted solely on the instructions of his client in his capacity as an advocate.
8. At this juncture, the duty of this court is not to interrogate whether the applicant's apprehensions are genuine but rather, to protect his constitutional rights and fundamental freedoms guaranteed to all persons.
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 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.
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, infringed, or threatened. The said article does not discriminate against 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. The applicant asserts that he faces continued harassment by law enforcement over a commercial dispute. In support of the application, they have annexed instructions issued by his client the 1<sup>st</sup> interested party, the sale agreement, correspondences between the parties, and the complaint made to the 1<sup>st</sup> respondent. He further states that he has been summoned and threatened with arrest on many occasions and to date has not been charged with any offence. He maintains that unless the reliefs sought are granted, his rights will be unjustly curtailed.
12. 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 under Articles 27(1) and 29 of the Constitution will be compromised.



13. Having considered the application, the supporting affidavit of the applicant, and the annexures thereto, I hereby order as follows:
- i. The application is certified urgent.
  - ii. The applicant herein is admitted to anticipatory bail in the sum of Kenya Shillings One Hundred Thousand (Kshs 100,000) to be deposited in court.
  - iii. For the avoidance of doubt, the respondents are at liberty to investigate or charge the applicant for any criminal conduct. However, they shall not arrest or detain the applicant in view of order (ii) above or until further orders of the court.
  - iv. The applicant's advocates are further directed to escort the applicant to the offices of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents for questioning and/or interrogation within seven (7) days from the date hereof and not later than 29<sup>th</sup> November 2024.
  - v. Upon the conclusion of investigations, and if a decision to charge the applicant has been made, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents shall not arrest or detain the applicant but he shall be informed of the court where he is to appear for plea taking.
  - vi. Order (v) shall remain in force until plea has been taken and the trial court has set new bail/bond terms in which case the orders of this court shall lapse.

**RULING DATED AND DELIVERED VIRTUALLY ON THIS 21<sup>ST</sup> DAY OF NOVEMBER 2024.**

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**D. KAVEDZA**

**JUDGE**

