



**Yonkge v Inspector General of Police & 5 others (Miscellaneous Criminal Application E172 of 2024) [2024] KEHC 13555 (KLR) (4 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13555 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
MISCELLANEOUS CRIMINAL APPLICATION E172 OF 2024**

**DR KAVEDZA, J  
NOVEMBER 4, 2024**

**BETWEEN**

**YIN YONKGE ..... APPLICANT**

**AND**

**INSPECTOR GENERAL OF POLICE ..... 1<sup>ST</sup> RESPONDENT**

**REGIONAL CRIMINAL INVESTIGATING OFFICER NAIROBI  
AREA ..... 2<sup>ND</sup> RESPONDENT**

**OCS NAIROBI AREA POLICE HQ ..... 3<sup>RD</sup> RESPONDENT**

**DIRECTORATE OF CRIMINAL INVESTIGATIONS ..... 4<sup>TH</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... 5<sup>TH</sup> RESPONDENT**

**BERNARD AMBOKO ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. The applicant has through a notice of motion dated 30<sup>th</sup> October 2024, filed under a certificate of urgency sought to be admitted to anticipatory bail pending arrest or charge. The motion which is brought under Articles 19, 20,21, 22, 29, 48, 49, 50, and 51 of the Constitution and Sections 123 of the Criminal Procedure Code is supported by the affidavit of the applicant of even date.
2. The grounds advanced in support of the application are as follows: the 6th respondent sought, and was granted, orders to freeze the Safaricom Paybill account operated by Bangbet Limited, where the applicant is employed. Within this application, the applicant was adversely identified as a target of the ongoing investigations. Consequently, the applicant is living in apprehension of imminent arrest and detention. He asserts his right to be presumed innocent until proven guilty and expresses his readiness to deposit a cash bail pending the outcome of the investigations. Additionally, he affirms his willingness to cooperate fully with the police throughout the investigation process.



3. 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.
4. The applicant before this court is seeking anticipatory bail. The applicant has averred that they are apprehensive that the police may use their powers to intimidate and harass them over a civil dispute.
5. 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.
6. 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.
7. 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 a party seeking orders of anticipatory bail.
8. Before issuance of such an order, the court must be convinced that the threat is real and not just mere apprehension. The applicant cannot for instance obtain an order of anticipatory bail by merely shouting "I fear my lord". He must demonstrate that unless the orders sought are granted by the court, their right to liberty will be infringed.
9. The applicant contends that he faces an imminent risk of arrest stemming from an ongoing dispute with his employer and Rabow Company Limited concerning an alleged misappropriation of funds. In support of this application, the applicant has annexed the pleadings filed by the 6th Respondent, in which the court granted freezing orders. Indeed, the applicant has been adversely named as a person of interest in the ongoing investigations, further substantiating his apprehension of potential arrest.
10. 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 Article 29 of the Constitution will be compromised.
11. 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. 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 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> respondents for questioning and/or interrogation within 10 days from the date hereof and not later than 15<sup>th</sup> November 2024.



- v. Upon the conclusion of investigations, and if a decision to charge the applicant has been made, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</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 a 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 IN THE ABSENCE OF PARTIES ON THIS 4<sup>TH</sup> DAY OF NOVEMBER 2024.**

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**D. KAVEDZA**  
**JUDGE**

