



Ikunyua & 2 others v Director of Public Prosecution & 3 others (Miscellaneous Criminal Application E459 of 2024) [2025] KEHC 13405 (KLR) (23 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13405 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
MISCELLANEOUS CRIMINAL APPLICATION E459 OF 2024
AM MUTETI, J
SEPTEMBER 23, 2025
IN THE MATTER OF: AN APPLICATION FOR ANTICIPATORY BAIL
AND
IN THE MATTER OF: AN APPLICATION UNDER ARTICLES 19,
22, 23, 27, 28, 49(1), 165(3) AND 258 OF THE CONSTITUTION
AND
IN THE MATTER OF: SECTION 123 OF THE CRIMINAL PROCEDURE ACT**

BETWEEN

**JOYCE NKIROTE IKUNYUA 1ST APPLICANT
ELIAS MUTUGWA IKUNYUA 2ND APPLICANT
LILIAN WAITHIRA KIMANI 3RD APPLICANT**

AND

**THE DIRECTOR OF PUBLIC PROSECUTION 1ST RESPONDENT
THE DIRECTOR BANKING FRAUD INVESTIGATIONS UNIT 2ND
RESPONDENT
THE INSPECTOR GENERAL OF POLICE 3RD RESPONDENT
THE HON ATTORNEY GENERAL 4TH RESPONDENT**

RULING

1. The applicants seek anticipatory bail in the instant application. The Notice of Motion is expressed to be brought under Articles 19, 20, 21, 22, 27, 28, 49(1), 165(3) and 258 of [the Constitution](#), Section



123 of the Criminal Procedure Act Section 1A, 3A of the Civil Procedure Act, Order 51 of the Civil Procedure Rules and all other enabling laws.

2. The inclusion of the provisions of the Civil Procedure in the application is a legal misnomer since an anticipatory application is precisely one of those interventions in the realm of criminal law that seek to offer relief to persons subject to criminal justice processes of investigation.
3. However, that is purely said as a matter of procedural caution but cannot defeat the instant application for it has also been hinged on other constitutional and criminal law provisions that give it life.
4. The applicants seek the following Orders:-
 - i. That this application be certified urgent and heard ex-parte in the first instance (spent).
 - ii. That the Honourable Court be pleased to admit the Applicant herein to anticipatory bail on affordable and reasonable terms pending arrest or charge.
 - iii. That the costs of this application be in the cause.
5. The application is based on the affidavit of Joyce Nkirote Ikunywa and the grounds particularized on the face of the application as hereunder;-
 - i. The 1st and 3rd Applicants herein are members of staff at Pak Space Ltd while the 2nd applicant is a director.
 - ii. The 2nd applicant is also a signatory at KCB Bank Limited account number Bank Account Numbers 111XXXXXX20(Ksh) in the name of Pak Space Ltd while the 1st applicant was a signatory before she was removed vide a court order.
 - iii. The 3rd respondent is the accountant and in charge of cross- checking cheque signatures and providing supporting documents before bank withdrawals are done.
 - iv. The aforesaid account is subject to litigation vide Milimani Commercial and Tax division petition number 5 of 2024, Elias Mutugwa Ikunyua versus George Okore & PAK Space Ltd.
 - v. The said George Okore has been misusing the police force and stating that the 1st and 2nd Applicants withdrew funds from the aforesaid account without mandate or a resolution and falsified documents to back up the withdrawals.
 - vi. The 3rd applicant has a complainant against conspiracy to defraud.
 - vii. The said allegations have resulted to an endless push and pull between the Applicants and the police with the said George Okore having the Applicants harassed by police.
 - viii. The Applicants are apprehensive that even though the investigating officer from the Banking Fraud unit acting in exercise of their constitutional powers of investigation assigned to them under Article 245 of the Constitution, the said officers are in abuse of that authority as the matter they purport to investigate is sub judice since the High Court of Kenya at Nairobi has already partially resolved the conflict in the interim pending hearing and determination of the petition.
 - ix. The Applicants have known no peace since the institution of the complaint and petition number 5 of 2024 at Nairobi and they have reasons to believe that the complainant George Okore is well known to very powerful cartels whose intention is to use the police to abuse their powers by intimidating them and threatening to arrest them.



- x. In harassing and intimidating the Applicants, the 2nd and 3rd Respondents have acted ultra vires and in utter abuse of power and public office and as such ought to be stopped by this Honourable Court;
 - xi. Despite the issue of the aforementioned account having been handled in the petition aforementioned, the Applicants will also pray that Court issues an order of investigation into the authenticity of the documents held by George Okore.
 - xii. It then baffles the Applicants that whereas the issue of bank accounts is being handled by the High Court, the 2nd and 3rd Respondents have singled them out to the exception of the complainant for purposes of arrest, investigations and subsequent charging in court when allegations of the purported stealing by servant and conspiracy to defraud remain unfounded.
 - xiii. By subjecting the Applicants to investigations, intimidation, harassment and threats of possible arrest, charging, conviction and sentencing for mere allegations of stealing by servant and conspiracy to defraud the 2nd and 3rd Respondent have violated the Applicants' rights under Articles 27 and 28 of *the Constitution* by discriminating them and subjecting them to indignity;
 - xiv. The Applicants have a right to be protected against abuse by state agencies by this Honourable Court under Articles 22 of *the Constitution*;
 - xv. The Applicants undertake to obey any police summons for further investigations should need be;
6. The applicants through the affidavit of Joyce Nkirote Ikunyua conted that;-
- i. That the deponent is a member of staff at Pak Space Ltd whereas the 2nd respondent is a director, while the third respondent is the accountant.
 - ii. That the deponent was a signatory at KCB Bank Limited Bank Account Numbers 111XXXXX20(Ksh) in the name of Pak Space Ltd.
 - iii. That the 2nd respondent is also a signatory.
 - iv. That the aforesaid account is subject to litigation vide Milimani Commercial and Tax division petition number 5 of 2024, Elias Mutugwa Ikunyua versus George Okore & PAK Space Ltd.
 - v. That one George Okore has been misusing the police force by claiming that the deponent and others withdrew funds from the aforesaid account without mandate or a resolution of the company and falsified documents to back up the withdrawals.
 - vi. That the said allegations have resulted to an endless push and pull between the applicants and the police with the said George Okore causing the applicants to be harassed by the police.
 - vii. That they are apprehensive that even though the investigating officer from the Banking Fraud unit are acting in exercise of their constitutional powers of investigation assigned to them under Article 245 of *the Constitution*, the said officers are in abuse of that authority as the matter they purport to investigate is sub judice since the High Court of Kenya at Nairobi has already resolved the conflict in the interim pending hearing and determination of the petition.
 - viii. That they have known no peace since the institution of the complaint and petition number 5 of 2024 at Nairobi. The applicants further claim that they have reasons to believe that the



complainant, George Okore, is well known to very powerful cartels whose intention is to use the police to abuse their powers by intimidating them and threatening to arrest us.

- ix. That in harassing and intimidating us, the 2nd and 3rd Respondents have acted ultra vires and in utter abuse of power and public office and as such ought to be stopped by this Honourable Court;
- x. That despite the issue of the aforementioned account having been handled in the petition aforementioned, the applicants urge this Court to issue an order of investigation into the authenticity of the documents held by George Okore. Annexed and marked JI1 is a copy of the order.
- xi. That it then baffles the applicants that whereas the issue of bank accounts is being handled by the High Court, the 2nd and 3rd Respondents have singled them out to the exception of the complainant for purposes of arrest, investigations and subsequent charging in court when allegations of the purported stealing by servant and conspiracy to defraud remain unfounded.
- xii. That by subjecting the applicants to investigations, intimidation, harassment and threats of possible arrest, charging, conviction and sentencing for mere allegations of stealing by servant and conspiracy to defraud the 2nd and 3rd Respondents have violated their rights under Articles 27 and 28 of *the Constitution* by discriminating against them and subjecting them to indignity;
- xiii. That the applicants have a right to be protected against abuse by state agencies by this Honourable Court under Articles 22 of *the Constitution* and it is on this basis that they pray that the Honourable Court protects them from such abuse by admitting them to anticipatory bail and/or bond on affordable and reasonable terms.
- xiv. That they undertake to obey any police summons for further investigations should the need arise.
- xv. That it is in the interest of fairness and justice that this application be allowed since the Respondents have violated the Applicants' rights under Articles 27 and 28 of *the Constitution* by discriminating against them and subjecting them to indignity;
- xvi. That the Bill of rights as provided for in *the Constitution* is an important aspect of a civilized nation and the Courts should always strive to enforce it.
- xvii. That the powers of arrest should not be used by the police or any person for that matter to harass, intimidate and oppress any person including the applicants.
- xviii. That the powers of arrest must be exercised in accordance with the law or other principles thereof and not arbitrarily.
- xix. That the applicants are to be presumed innocent under the law until proven guilty even when charged with a criminal offence and their rights under Article 50 of *the Constitution* are at the risk of breach unless the orders sought herein are granted.
- xx. That the applicants apprehend the contravention of their fundamental rights and freedoms under Article 47, 48, 50 of *the constitution* should the intended arrests be carried out.
- xxi. That they are entitled to secure protection of law free from arbitrary and unreasonable arrest under the law.



- xxii. That they are entitled to the enjoyment of fundamental rights and freedoms under the Constitution including the right to liberty, privacy, personal dignity and fair treatment under the law.
 - xxiii. That the High Court has powers under Article 22 of the Constitution to determine an application made by a person who alleges the contravention or likelihood of contravention of our rights and freedoms under Articles 49 and 50 of the constitution and may issue such orders for the purposes of enforcement of any of the said provisions.
 - xxiv. That they undertake to obey any police summons for further investigations.
7. The applicants on the strength of the a forestated averments urge this court to consider admitting them to anticipatory bail to forestall the threat of breach of their fundamental rights.
8. The respondents in answer to the application filed grounds of opposition stating that;-
- a. The Application is misconceived and unsubstantiated
 - b. The Application is an abuse of the court process since the Applicants have informed this court that they have an ongoing petition before Milimani commercial and Tax division petition No. 5 of 2024.
 - c. That the issues raised by the Applicant herein are the same issues that will be canvassed in that petition and therefore this is an abuse of court process.
 - d. That the applicant can pray for orders to stop the harassment by 2nd and 3rd respondents in Petition No. 5 of 2024 at commercial and Tax division, if these allegations are true and verifiable.
 - e. That that the Applicant has not demonstrated the existence of the averments in the Application and that there is harassment by the investigating agencies as no O.B or police summons has been produced in this court to show there is a real threat of arrest.
 - f. That the Application lacks merit and the same should be dismissed in its entirety.
9. The respondents did not file any affidavit to discount the allegations of harassment and intimidation made by the applicant. The grounds of opposition filed are in this court's view generic and a standard sweeping response to the issues raised by the applicants thus the grounds do not in any dislodge the allegations of abuse of authority by the police.
10. The Constitution of Kenya under Article 20 (1) provides that the bill of rights applies to all law and binds all state organs and all persons. The rights under the Bill of rights are to be enjoyed to the fullest extent and that any limitation of a bill of right must meet the constitutional test of reasonability and justifiability in a open and democratic society.
11. Further, Article 24 of the Constitution decrees that human dignity, equality and freedom should be upheld and promoted. Any limitation to a right must be gauged against the nature of the right, the importance of the purpose of limitation of the right and the nature and extent of the limitation. Whereas it is not given that all investigations will lead to an arrest, every citizen faced with the threat arbitrary arrest has the right to approach the High court for redress. It is precisely on the basis of such constitutional reality that individuals move the courts for anticipatory bail order.



12. An application for anticipatory must however not be allowed if it turns out that it is calculated to aid a person to evade judicial process, obstruct the execution of warrants or impede investigations into a crime.
13. The Supreme court of India in Serious Fraud Investigation Office Vs. Aditya Sarda Special Leave (Criminal No. 13956 of 2023) held that persons who seek to evade the judicial process should not be aided by the courts through the grant of anticipatory bail orders.
14. The applicants in the instant application have indicated willingness to cooperate with the investigators and further committed themselves to submitting themselves to the jurisdiction of this court or any other court should the need arise.
15. It is the view of this court that the mere existence of a commercial dispute in the Commercial Division of the High court should not act as a bar to this court to grant relief. In any case Section 193 (a) of the Criminal Procedure Code envisages a situation where criminal proceedings may run parallel to a civil proceeding.
16. It would therefore be idle for this court to decline to consider this application simply because there is a commercial dispute pending in court.
17. It is necessary to point out that whereas the Commercial division concerns itself with matters that largely fall within the realm of Article 40 of *the constitution* on economic rights the jurisdiction of criminal court concerns itself more with the rights spelt out under Articles 48, 49, 50 and 51 of *the Constitution* where a party claims that its right to human dignity , freedom and security of the person under Articles 28 and 29 of *the constitution* are threatened.
18. It is perfectly in order therefore, for any aggrieved party to approach the Criminal Division of the High court for an order of Anticipatory bail. In Praveen Kumar Vs State of U.P & Another Criminal Appeal No. 161 of 2025 considering an appeal against the refusal to grant Anticipatory bail by the High court of Allahabad, Lucknow Bench in Criminal Misc. Anticipatory Bail Application U/S 482 BNSS No. 146 of 2024 held that :

“We, therefore, allow this appeal and set-aside the order passed by the High Court. We direct that in the event of arrest of the appellant, the Arresting Officer shall release the appellant on bail, subject to furnishing cash security of the sum of Rs.25,000/- (Rupees TwentyFive Thousand only) with two like sureties. It is directed that the appellant shall extend complete cooperation in the ensuing investigation. The appellant shall not misuse his liberty and shall not in any way influence the witnesses or tamper with the material on record. Any infraction of the conditions shall entail cancellation of anticipatory bail granted to the appellant. With the aforesaid directions, the Criminal Appeal is allowed.”

9. In this country like in most other common law jurisdictions every person who faces false accusations, malicious complains or instances where the likelihood of arrest is high has every right to seek anticipatory bail as of right. Article 23 (1) of *the Constitution* grants the High Court jurisdiction to hear and determine applications for redress of a denial, violation or infringement of, or threat to a right of fundamental freedom in the bill of rights.
10. The applicants in this case have alleged that there is threat of violation of Articles 28 and 29 of *the Constitution* through arbitrary arrest and incarceration. This court cannot fail to intervene and grant appropriate relief just like the Indian Supreme court did in the decision cited above so as to secure the liberty of the applicants.



11. The liberty of a man is so important that it must never be taken away capriciously. The law should provide immediate reprieve to those that face the risk of arbitrary arrest for the state does not suffer any prejudice and all that the orders do is to ensure that there is civility during investigations and that innocent persons are not denied their freedom on the basis of malice, caprice or ill will.
12. Accordingly, the application dated 6th of December 2024 is granted and the applicants are ordered to
- i. Cooperate with the investigators by responding to any summons issued to them to appear and give any information that may be required of them on any working day between the hours of 6:30 a.m to 6:30 p.m
 - ii. That in the event that the applicants are to be charged they shall be summoned to appear before a magistrate's court indicated on the face of the summons on a date and time to be specified by the Investigating Officer.
 - iii. The applicants are to deposit with this court the sum of Kshs.50,000 each which sum shall be refundable to them upon the conclusion of investigations should they be arraigned before court to answer to any charges.
 - iv. In the event that the applicants are charged, the magistrate before whom the plea shall be taken will be at liberty to set bail terms as is appropriate.
 - v. This file shall be mentioned after 60 days within which investigations are expected to have been concluded for final orders.
20. The matter to be mentioned on 26th November 2025 for further orders.
21. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF SEPTEMBER 2025.

A. M. MUTETI

JUDGE

In the presence of:

Court Assistant: Habiba

Ms Mathia for the state

Ms Ogega for the Respondent

