



**Kahia v Director of Criminal Investigation & 2 others; African Gas And Oil Limited (AGOL) (Interested Party) (Miscellaneous Criminal Application E466 of 2024) [2025] KEHC 13522 (KLR) (Crim) (23 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13522 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
MISCELLANEOUS CRIMINAL APPLICATION E466 OF 2024  
AM MUTETI, J  
SEPTEMBER 23, 2025**

**BETWEEN**

**OSMAN AHMED KAHIA ..... APPLICANT**

**AND**

**DIRECTOR OF CRIMINAL INVESTIGATION ..... 1<sup>ST</sup> RESPONDENT**

**INSPECTOR GENERAL OF POLICE ..... 2<sup>ND</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTION ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**AFRICAN GAS AND OIL LIMITED (AGOL) ..... INTERESTED PARTY**

**RULING**

1. The applicant moved this court by way of a Notice of Motion dated the 10<sup>th</sup> day of December 2024 seeking to be granted anticipatory bail.
2. The applicant sought the order on the basis that the respondents were bent on harassing him under the guise of conducting investigations in respect of ownership of properties identified as plot MN/VI/NO. 5169, plot No. MN/VI/4805 and plot No. MN/VI/4838.
3. The properties according to the applicant were owned by Kahia Transporters Ltd, Mirithi free port Ltd and Dope Investments Ltd.
4. The applicant alleged that the respondents had on various occasions arrested him in connection with the investigations and were bent on charging him with unspecified charges.



5. According to the applicant the respondents were acting at the behest of some third parties whom he did not name.
6. The applicant further contended that in some instances he would even when the respondents were fully aware of there being civil suits pending in court in respect of the same matters.
7. The applicant further contended that the respondents are acting in a manner calculated to appease some very powerful unnamed individuals in the governance structure of this country.
8. According to the applicant the arrests are geared towards exerting pressure on him so as to let go his property.
9. The applicant thus maintains that if this court does not intervene and grant him the relief sought he is likely to continue being harassed and or intimidated by the respondents.
10. The applicant's plea to the court is that his rights and Articles 29, 47, 49, 50 and 51 should be protected from breach by the respondents.
11. The applicant contends that his right to liberty is threatened to be continuously breached by the respondents thus his ardent plea for admission to anticipatory bail.
12. The applicant has urged thus court to uphold the provisions of Article 29 and 50 of *the constitution* and grant him the order sought.
13. At the hearing the applicant through counsel maintained that he was not averse to investigations being done but urged the court to find and hold that the investigations should be carried on within the bounds of law and that he should not be subjected to mental torture, unlawful confinement and harassment by the respondents.
14. He therefore urged this court to allow his application.
15. The applicant however told this court that the 3<sup>rd</sup> respondent had written to the 1<sup>st</sup> and 2<sup>nd</sup> respondents advising them that the matter was purely civil.
16. The applicant made reference to a letter dated 19<sup>th</sup> December 2024 / 16<sup>th</sup> /1/2025 and 16<sup>th</sup> April 2025.
17. The applicant contended that unless the court intervenes by way of the order sought there is a likelihood of continued harassment and arbitrary arrests.
18. The applicant when pressed by this court to state why he still thought an anticipatory bail order was necessary, he stated that the matter of investigations was still live he required the order to prevent arbitrary arrest.
19. Ms Pere's Ogega prosecution counsel appeared for the 3<sup>rd</sup> respondent and in her response to the application argued that the applicant had been arrested by DCI officers and taken down to Kwale for purposes of being charged however the 3<sup>rd</sup> respondent reviewed his decision to charge and directed the prosecution counsel in Kwale not to proceed and charge the applicant.
20. Ms Ogega argued that anticipatory bail can only be issued upon the proof of serious violation of one's rights. Counsel placed reliance on the case of *Mandiki Luyeye Vs. Republic (2015) eKLR* by Lady Justice Ngenye Macharia (as she then was) affirming the position.
21. Counsel further urged that it cannot issue on unsubstantiated claims by the applicant.
22. In Ms Ogega's view since the Director of Public Prosecutions is not likely to charge him the application should be dismissed.



23. The Interested party in the application African Gas Oil Ltd (AGOL) was enjoined at their request.
24. In seeking to be enjoined, the Interested Party specifically pleaded with the court to have them on board so that they could assist the court in uncovering the truth in the matter.
25. The Interested party contended that the applicants had adversely mentioned them in their affidavit in support of the application and that their interest in the matter concerned matters that are already before the court in Mombasa ELC No. E012 of 2023.
26. The Interested Party through Mr. Ngetich Advocate submitted that the matter under investigations was raised by Dope Investments Ltd and not the Interested Party.
27. The Interested party categorically denied any involvement in the tribulations facing the applicant.
28. The Interested party argued that they had not in anyway sought to influence the respondent to arrest and charge the applicant.
29. Counsel Ngetich cited Article 245 of *the Constitution* to argue that the Inspector General of Police acts independently and that it cannot therefore be true that the investigations have been initiated at their behest or through improper influence on their part.
30. The applicant was accused by the interested party of misleading the court and therefore the court was urged to disallow his application on that account.
31. In a swift rejoinder the applicant argued that even though the Director of Public Prosecution had directed that he should not be charged the complaint by the Dope Investments remained under investigations and that there was real danger that he would continue being harassed and or threatened with arrest.
32. Mr. Munene state counsel appeared for the 1<sup>st</sup> and 2<sup>nd</sup> respondents and argued that the issues under investigation touch on fraudulent acquisition of land.
33. According to Mr. Munene the applicant ought to have been charged but the Director of Public Prosecution had halted the matter declaring it to be a civil matter.
34. According to Mr. Munene the matter is still live before the Director of Public Prosecutions and that there exists a valid complaint which in their view warrants arrest and prosecution.

### **Analysis And Determination**

35. The applicant has expressed concern that there is the threatened violation of his right to liberty by the respondents and more specifically officers from the 1<sup>st</sup> and 2<sup>nd</sup> respondent.
36. It is common ground that there has been active investigations touching on issues concerning land.
37. It is clear that certain aspects of the investigations have been finalized and directions given by the 3<sup>rd</sup> respondent that the applicant should not be charged.
38. The parties all agree there is an investigation that was initiated vide a complaint by Dope Investments Ltd, and that the matter is still under investigations according to the applicant and Mr. Munene for the 1<sup>st</sup> and 2<sup>nd</sup> respondent.
39. In fact, according to Mr. Munene the applicant is likely to be charged and the failure by the Director of Public Prosecutions to initiate prosecution so far is a matter that in their view remains active.



40. I understood Mr. Munene to be politely telling the court that the 1<sup>st</sup> and 2<sup>nd</sup> respondents do not agree with the decision of the Director of Public Prosecutions not to charge. However, this court cannot intervene in the matter regarding the DPP's decision not to prosecute because that is not the issue before this court at the moment.
41. The parties who may be dissatisfied with the decision of the DPP in the matter do not require advise from this court on how to ventilate that issue. The law has adequate provisions to address all legal concerns a party may have and in the right fora. This is not the proper proceeding through which to challenge the decision of the DPP.
42. The concern of this court is whether there is imminent danger of violation of the rights of the applicant by any of the respondents to justify the grant of anticipatory bail.
43. Anticipatory bail is constitutionally underpinned under Article 22 of *the Constitution* and the primary purpose of it is to safeguard an individual from arbitrary arrest.
44. It is an entitlement to a citizen who feels threatened and the threat is prima facie evident.
45. It is not an order that is intended to shield an individual from investigations or prosecution.
46. It is a preventive measure designed by the law to obviate violation of the fundamental right to liberty under Article 29 of *the constitution*.
47. The order of anticipatory bail ensures that even at the pre charge stage the rights of a person who is suspected to have committed a crime are respected, upheld and promoted.
48. It is a relief meant to ensure that there is due process at the investigation stage and that the dignity of an individual under Article 28 of *the constitution* is maintained and respected.
49. *The constitution* of Kenya 2010 ushered a new chapter in our constitutional democracy. The society expects that those charged with the responsibility to investigate crimes do so paying utmost respect to the rights of individuals.
50. It is in the letter and spirit of Article 29 that no person should be subjected to torture in any manner, whether physical or psychological.
51. Further, no one should be treated inhuman and degrading manner.
52. The 3<sup>rd</sup> respondent's counsel admitted that the applicant was arrested and taken to Kwale to be charged but somewhere along the way a decision was made that he should not be charged and he was freed.
53. The pressure that an arrest brings to bear upon an individual is to say the least depressing.
54. It is actually traumatizing to an individual thus psychologically the person is actually tortured. However, if the arrest is a lawful and humanly executed it is excusable and it does not amount to torture as provided for under Article 29.
55. However, as it has been argued by the applicant where the threat of arrest remains live there is good reason for the court to intervene.



56. In *Sevakal & Another Vs. Director of Public Prosecutions & 4 Others* (Misc. Criminal Application No. E039 of 2024) [2024] KEHC 15796 (KLR) (Crim) (16<sup>th</sup> Dec 2024) (Ruling) the Hon Lady Justice L.N Mutende at paragraph 14 held :-

“The burden to demonstrate the claim of constitutional violation lies with the applicant. The Judiciary Bail and Bond Policy Guidelines provide that:

“The High Court may grant anticipatory bail, that is, bail pending arrest, provided the applicant demonstrates that his or her right to liberty is likely to be compromised or breached unlawfully by an organ of the State that is supposed to protect this right. Further, the applicant must demonstrate that the apprehension of arrest is real and not imagined or speculative.”

57. In this application the applicant has made a case for grant of anticipatory bail.

58. The complaint by Dope Investments Ltd remains under investigation a fact not denied by the 1<sup>st</sup> and 2<sup>nd</sup> respondents. As such I find that the claim by the applicant that he is at the risk of arrest any time is not far-fetched.

59. In fact, considering that there is simmering tension between the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondent in this matter regarding the decision whether or not to prosecute this court cannot leave the applicant exposed to the risk of arrest that may be carried out even without concurrence by the respondents whether the applicant is to be charged.

60. To apprehend a man in Nairobi take him all the way to Kwale only to release him without charge is torturous and uncalled for especially where in a case such as this a summons would have been adequate.

61. The court is therefore inclined to grant the prayer for anticipatory bail.

62. However, anticipatory bail cannot be granted ad infinitum. The same must be determinate.

63. In essence the anticipatory bail order should be for a specific period and in this case the anticipatory bail that I grant shall last for the period when the investigations initiated pursuant to the complaint by Dope Investments shall be in force.

64. The interested party Africa Gas and Oil Ltd does not appear to have any active criminal complaint against the applicant thus their adverse mention in the instant application was unmerited. The court finds that all the paragraphs that relate to them were not necessary as the applicant has not been able to demonstrate in what manner they had influenced the respondents to harass the applicant. The court cannot issue any orders against them since anticipatory bail orders would only apply to the respondents. I do not wish to say more about the interested party since no nexus has been shown between them and DOPE investments whose matter is still under active investigation by the police.

65. The applicant in this case has demonstrated that his right to liberty has been violated before by the respondents and still remains under the threat of violation. He has therefore satisfied the requirements of the law in considering whether or not to grant anticipatory bail.

66. For the avoidance of doubt the order of anticipatory bail does not bar the charging of the applicant thus should the investigations lead to that eventuality the applicant shall be summoned to appear in the court he is to be charged for purposes of taking plea.

67. The applicant to deposit Ksh 100,000 in court.



68. In the meantime, the applicant shall continue to cooperate with the investigators should he be summoned to appear before them.
69. The interim orders issued on the 19<sup>th</sup> December 2024 are hereby confirmed.
70. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23<sup>RD</sup> DAY OF SEPTEMBER 2025.**

**A. M. MUTETI**

**JUDGE**

In the presence of:

Court Assistant: Habiba

Mwachofi for the Applicant

Ms Ogega for the 3<sup>rd</sup> Respondent

Ngeno for Interested Party

