



Soliman v Director of Public Prosecution (Criminal Miscellaneous Application E057 of 2025) [2025] KEHC 13820 (KLR) (2 October 2025) (Ruling)

Neutral citation: [2025] KEHC 13820 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL MISCELLANEOUS APPLICATION E057 OF 2025**

**JM NANG'EA, J
OCTOBER 2, 2025**

BETWEEN

AHMED MOHAMED ATTA SOLIMAN APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTION RESPONDENT

RULING

1. This Ruling follows a Notice of Motion application dated 3rd April 2025 expressed to be bought pursuant to Section 49(10 & 50(2) of the Constitution of Kenya, 2010 (*sic*); Protection and Fundamental Rights and Freedoms of the Individual - Practice Rules; the inherent jurisdiction of the Honourable Court and all enabling provisions of the law. The Applicant seeks reliefs as hereunder:-
 1. Spent
 2. That the Applicant be granted anticipatory bail/bond pending arrest or charges.
 3. That the Respondent through its enforcing agents (Police Officers) be barred from arresting the Applicant or holding him in custody pending the hearing and determination of this application.
 4. That any other order deemed fit and expedient in the circumstances (*sic*).
2. The applicant swore an affidavit in support of the application stating that he is the Chief Executive Officer and shareholder of Al Khaleej for Man Power Recruitment Limited. He avers that on 28th March 2025 Police Officers went to his Company premises over a work contract the Company had secured. The Officers were in search of him on allegations that he obtained money by false pretenses. The Applicant contends on advice of his Advocates that he is not personally liable for any debt owed by the Company and that any remedy lies in a civil action. It is therefore deposed that the transaction



in issue is not in the realm of criminal law and therefore the police are abusing the criminal process to redress a civil dispute, hence this application.

3. The Respondents opposes the application through an affidavit in reply sworn by a Prosecution Counsel based in Nakuru named Nancy Sang. Counsel observes that anticipatory bail is not expressly provided for in the Constitution or Statute Law but the relief may be granted in the discretion of the court based on particular circumstances of every case. The court is told that since the order sought has an effect of impeding criminal investigations which is the exclusive mandate of the police, cogent and sound reasons for grant of the orders sought must be given. It is further averred inter alia that there are no exceptional reasons for allowing the application, and I am urged to dismiss the same.
4. Learned Counsel for the parties filed Written Submissions, which I have perused against the application and the rival affidavit evidence. Counsel for the Applicant submit citing the judicial determination in *Wekesa v Attorney General & Another* (2017) eKLR that the remedy of anticipatory bail is available to an individual who demonstrates reasonable apprehension of arrest or violation of a constitutional right. Further reference is made to case law in *Republic v the Chief Magistrate's Court (Mombasa)* KLR 703 in which it was held that criminal proceedings should not be used to champion a civil cause or for any other ulterior motive.
5. This legal position is underscored in the case of *Reuben Mwangi V. DPP & 2 Others* (2012) eKLR *inter alia* also relied upon by the Applicant. Counsel correctly submits that the criminal process should never be used to settle personal scores.
6. The Respondents in their reply submissions reiterate that anticipatory bail is not expressly provided for under the Constitution or statute and therefore it is granted at the discretion of the court according to the circumstances of every case. Counsel for the Respondents submit that since the orders sought have an effect of impeding criminal investigations, any such orders should be based on “cogent and constitutionally sound reasons such as a serious breach of the Applicant’s rights by an organ of the state which is supposed to protect the same.” (See case law in *W’Njuguna v Republic* [2004] eKLR and *Mandiki Luyeye v Republic* [2015] eKLR quoted in the Respondent’s submissions).
7. Counsel further refer the court to this court’s judicial determination in *Paul Ole Kuyana & Another v Director of Public Prosecutions & 2 Others* [2021] eKLR in which it was observed that an application for anticipatory bail may be considered and granted only where there is proof of or threatened breach of a constitutional right, for instance the right against arbitrary arrest..
8. Under Article 23 of the Constitution the court is empowered to grant appropriate reliefs for violation of the Bill of Rights including a threat of violation of a right under the Bill of Rights. Article 29 guarantees every person the right to freedom and security including the right not to be deprived of freedom arbitrarily. This court has jurisdiction to redress such violation if proven. According to the Respondent the Applicant has not met the threshold by proving infringement of a right to warrant grant of anticipatory bail as set out in the cited decisions.
9. The Applicant in the instant matter craves the remedy for the reason that the Respondent allegedly is abusing the criminal process to remedy a civil wrong. Whether what is under investigations by the police is a civil wrong or a criminal act or omission is for the court that may eventually hear the case to determine. There are no sound reasons advanced to warrant prohibiting the Applicant’s arrest and prosecution by granting of anticipatory bail. The court is also alive to the fact that there are legal mechanisms to ensure fair trial in the course of hearing of a criminal case. The Applicant would not therefore be prejudiced if the reliefs sought are not granted. As is the law, anticipatory bail cannot be granted based on fear or speculation but serious breach or threatened of guaranteed rights which is not



demonstrated. The actual complaint against the Applicant or his company is not even explained by either of the parties, and therefore the Applicant's fears appear to be only speculative.

10. The Application is accordingly dismissed.

J. M. NANG'EA, JUDGE.

RULING DELIVERED THIS 2ND DAY OF OCTOBER, 2025 IN THE PRESENCE OF:

Advocate for Applicant, (Absent)

The Applicant, (Absent)

Advocate for Respondent, Mr Wakasyaka

The Court Assistant (Mr Ng'eno)

J. M. NANG'EA, JUDGE.

