

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ISIOLO**  
**MISC. CRIMINAL APPLICATION NO. E005 OF 2025**  
**HON. MOHAMED ROBA**  
**QOTO.....APPLICANT**  
**VERSUS**  
**DIRECTORATE OF CRIMINAL**  
**INVESTIGATIONS.....1<sup>ST</sup> RESPONDENT**  
**INSPECTOR GENERAL , NATIONAL**  
**POLICE SERVICE.....2<sup>ND</sup>**  
**RESPONDENT**  
**DIRECTORATE OF PUBLIC**  
**PROSECUTION.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Applicant herein, filed the Notice of Motion dated 6<sup>th</sup> August 2025, seeking orders for anticipatory bail. The application has been filed pursuant to Articles 2, 19, 20, 22, 23, 25, 27, 28, 29, 47, 49, 50, 159, 165, 244, 258, 259, and 260 of the Constitution of Kenya. Specifically, the Applicant seeks orders that the he be admitted to anticipatory bail on such reasonable terms and conditions as the court deems fit to grant pending arrest(sic) , investigations and , or charges by the respondents.
2. The Applicant states that he is the current Speaker of the Isiolo County Assembly, having been duly elected in 2022. That he is apprehensive of an impending arbitrary arrest and detention by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, which he attributes to malicious maneuvers employed by the Governor of Isiolo County. He believes the Governor of Isiolo is behind the arrest as a way of preventing him from

exercising his duties as the speaker of the Isiolo county Assembly

3. It is further stated that there was a previous attempt to take away his right to liberty on trumped up charges, forcing him to seek for anticipatory bail before the high court in Machakos, under Misc. App. No. E044 of 2025. He believes the present attempt is similar to the previous one.
4. The Application is strenuously opposed by the respondents. Through the Affidavit of IP Reyatone Mwalo, who identifies himself as the county Criminal investigations officer the 1<sup>st</sup> and 2<sup>nd</sup> respondents state that there is no evidence of any previous arrest, harassment or interrogation of the Applicant
5. He further states that the Applicant is under investigation for incidences of malicious damage to property, Arson and Assault on the police officers, while on duty. The particular names of the police officers who were assaulted, as well as the registration particulars of the burnt vehicle are provided in the affidavit. It is further stated that the Arson and assault on the officers took place in the home of the Applicant, making him culpable.
6. The respondents further state that the investigations have been carried out fairly; that the respondents were carrying out their constitutional mandate, and that there has been no violation of Article 244 of the constitution by the two respondents.
7. The Application was prosecuted by way of oral submissions.

### **Applicant's submissions**

8. The Applicant reiterates that the present threats of arrest is not the first since an impeachment Motion against the Governor of Isiolo was passed by the Assembly; that he believes the respondents are being used by the Governor so that he does not get to perform his duties as the speaker. He reads malice on account of the fact that he was summoned to appear before the DCI in Embu yet there is a DCI office in Isiolo. That he is willing to appear before the DCI in Isiolo. He states that even after showing his willingness to appear in Isiolo DCI office in Isiolo, on 6/08/2025 he was again summoned to appear in Embu. That it was a sign of malice to seek to repossess his official vehicle while there was an on-going court case. It is asserted that there is no complainant, there are no witnesses, and there is no occurrence Book (OB) report on the incident that has been attached. It is finally submitted that anticipatory bail will not stop the respondent from carrying out their work, in any event.
9. Through the prosecuting counsel the respondents submit that a complaint was received at DCI's regional office at Embu, prompting the DCI to issue summons to the Applicant, but the Applicant failed to appear. That the file was forwarded to the 3<sup>rd</sup> respondent and a decision to charge was made.
10. It is further submitted that the police have a constitutional mandate to act upon any complaint made; that in any event bail is a constitutional right once a person has been charged and it is evident that the proposed charges are bailable. It is

the respondent's final submission that the Applicant has failed to demonstrate that any of his rights had been violated.

### **Applicant's response**

11. The Applicant submits that whereas there is evidence that inquiry into the alleged crimes was carried out in isiolo , there was no justification for being summoned to Embu Regional headquarters of DCI . On the respondent's submission that no violations have been demonstrated the Applicant states that an attempt at arbitrary arrest has been carried out before.

### **Analysis & Determination**

12. From the record, it is evident that the central issue for determination is whether the apprehension of arrest cited by the Applicant is arbitrary and malicious.
13. The principles guiding the grant of anticipatory bail are well settled. In the case of **Republic vs Chief Magistrate Milimani & Another Exparte Tusker Mattresses Ltd & 3 Others [2013] eKLR** the court stated as follows: -

*"... However before going to the merits of the instant application it is important to note that what is sought to be prohibited is the continuation of investigation rather than a criminal trial. The Court must in such circumstances take care not to trespass into the jurisdiction of the investigators or the Court which may eventually be called upon to determine the issues hence the Court ought not to make determinations which may affect the investigations or the yet to be conducted trial. That this Court has*

*power to quash impugned warrants cannot be doubted. However, it is upon the ex parte applicant to satisfy the Court that the discretion given to the police to investigate allegations of commission a criminal offence ought to be interfered with. It is not enough to simply inform the Court that the intended trial is bound to fail or that the complaints constitute both criminal offence as well as civil liability. The High Court ought not to interfere with the investigative powers conferred upon the police or the Director of Public Prosecution unless cogent reasons are given for doing so."*

14. Also in the Court in **Kipoki Oreu Tarus v Inspector General of Police & 5 Others [2014] eKLR** stated :

*"...The criminal justice system is a critical pillar of our society. It is underpinned by the Constitution, and its proper functioning is at the core of the rule of law and administration of justice. It is imperative, in order to strengthen the rule of law and good order in society, that it be allowed to function as it should, with no interference from any quarter, or restraint from the superior Courts, except in the clearest of circumstances in which violation of the fundamental rights of individuals facing trial is demonstrated..."*

15. The exercise of discretion therefore in granting anticipatory bail must be exercised cautiously, particularly where the state organs responsible for maintaining law and order, such as the Directorate of criminal investigations department and the Director of Public Prosecutions, are exercising their

constitutional mandate to investigate offences and prosecute offences.

16. The respondent has submitted documents in evidence which *prima facie* , show that certain offences may have been committed and indeed that the Applicant has been summoned by the 1<sup>st</sup> respondent.

17. I have considered the documents presented and what has been deposed by both parties to the Application and the following are my observations:

a). The Applicant has stated that this is not the first time that an attempt at his arrest has been made. Whereas the respondents have denied this, they have not responded directly to the order of anticipatory bail obtained in Machakos high court. Was it obtained on baseless accusations against the 1<sup>st</sup> respondent? It is instructive that the court granted the orders *ex parte* due to the 1<sup>st</sup> respondent's failure to respond to the accusation. The Applicant's apprehension therefore based on earlier attempts to arbitrarily arrest him is valid. I arrive at this conclusion because the respondents' failure to defend themselves before the Machakos high court was tantamount to the admission of accusations that had been laid out by the Applicant.

b). From the documents submitted by the respondents themselves, it is evident that the alleged crimes took place in Isiolo. . The letter dated 1/08/2025 addressed to the 1<sup>st</sup> respondents in Embu says as much. According to the respondents affidavit the incident(s) were reported at Isiolo police station. In view of the

aforegoing one is bound to question the motive behind the summons to appear in Embu. Despite the respondents counsel stating that a complaint was received in Embu, there is no OB extract or number in respect of such a report. Despite the Applicant raising this issue, the respondent did not offer any explanation. Am not persuaded that summons to appear in Embu, to answer to complaints raised in Isiolo was based on good faith.

18. The respondents have argued that the Applicant has not demonstrated that any rights have been violated. The Applicant however has pleaded that he is likely to be subjected to Arbitrary arrest, like it had happened before. Every person has a right not to be deprived of his freedom arbitrarily without a just cause. ( Article 29(1) of the constitution)

19. Finally it is apparent from the 3<sup>rd</sup> respondent's letter of 01/8/2025 that the investigations are complete and the 3<sup>rd</sup> respondent is ready to prefer charges. It then defeats the whole purpose of arresting the Applicant.

20. The Application has merit. Consequently, the following orders are hereby issued.

a).The Applicant is hereby admitted to anticipatory Bail

b). The Applicant to deposit a further amount of ksh. 350,000 in court to make a cash Bail of ksh. 500,000, which cash Bail will be refunded to the Applicant, if no charges arising from the subject investigations, are preferred against him within 6 months from the date of this Ruling.

c). The Applicant is hereby ordered to avail himself to the offices of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents for interrogation as and when required, and to fully cooperate with the investigators.

d). The respondents to finalize investigations and make a determination whether to charge the Applicant within a period of six months from the date of this Ruling .

Dated, signed and delivered at Isiolo this 3<sup>rd</sup> day of December 2025.

S. Chirchir  
Judge.

In the presence of :

Roba Katelo - court Assistant

Mr. Jarso for the Applicant

Mr. Ngetich for the 3<sup>rd</sup> respondent