

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**MISCELLANEOUS CRIMINAL APPLICATION NO. E224 OF**  
**2025**

**ABDIMAJID ABDISAIR MAALIM.....**

**.....APPLICANT**

**VERSUS**

**DIRECTOR OF CRIMINAL INVESTIGATIONS.....1<sup>ST</sup>**

**RESPONDENT**

**NATIONAL POLICE SERVICE.....2<sup>ND</sup>**

**RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTIONS.....3<sup>RD</sup>**

**RESPONDENT**

**RULING**

1. The applicant prays for anticipatory bail on reasonable terms and conditions; and, for a conservatory order to restrain the respondents *“from arresting, charging, harassing or interfering with [him] without conducting investigations and according him an opportunity to be heard”*.
2. The originating notice of motion is dated 26<sup>th</sup> August 2025. From the supporting affidavit and the submissions by his learned counsel, *Mr. Horsefield*, the applicant is a director of *Casqid Travel Agency Limited* which deals with *“immigration*

*consultancy, visa applications and securing scholarships abroad*". He claims to have fulfilled all his obligations under various contracts with his clients.

3. The applicant has been charged in Nairobi MCCR E4190 of 2025. He does not provide further details in the affidavit. But *Mr. Horsefield* informed the court that the applicant was released on a cash bail of Kshs 100,000 but he is apprehensive that the police will re-arrest him on new charges. And sure, he was re-arrested and charged in a new case being Nairobi MCCR E4287 of 2025 and granted bail of Kshs 800,000. He argues that the police have also unlawfully confiscated his *I-Phone*.
4. He avers that he has a "pre-existing congenital heart condition" and that any further arrest or incarceration will be detrimental to his health. A letter from his clinic marked *AAM2* is annexed.
5. In the supplementary affidavit sworn on 21<sup>st</sup> October 2025, he deposes that he has made formal complaints to the police about the harassment (annexture *AAM3*) in which he argues that all the claims by the complainants are of a civil nature.

He adds that a majority of them are exaggerated and meant only to drive up the bail conditions.

6. He thus argues that he is a victim of systematic harassment by state organs in violation of his constitutional rights to liberty or fair administrative action. Learned counsel relied on the precedent in ***Eric Mailu v Republic*** [2013] KEHC 4634 (KLR).
7. The application is opposed by the Director of Public Prosecutions (hereafter *the DPP*) through grounds of opposition dated 22<sup>nd</sup> October 2025. The pith of those objections is that anticipatory bail is undeserving in this case; and, that the police cannot be barred from carrying out investigations. It was also submitted that by dint of Article 157 of the **Constitution**, the DPP is at liberty to charge the applicant in such cases.
8. There is also the replying affidavit sworn by *SSGT Carolyne Mutiso* on 22<sup>nd</sup> October 2025. She is the investigating officer in Nairobi MCCR E4287 of 2025. She avers that the police are acting on a complaint by *Cicilia Wanjiru* and 56 others alleging that the applicant obtained monies by falsely

pretending on a *TikTok* post that his company had available jobs abroad. At paragraph 25, she deposes that the lower court directed that all the complaints be consolidated into a single file. She adds that the confiscated *I-Phone* will be produced as an exhibit.

9. On 23<sup>rd</sup> October 2025, I heard further submissions from both learned counsel for the applicant and the respondents.

10. I take the following view of the matter. The criminal cases in the lower court are pending for trial; and, there may well be new complaints. I thus decline the temptation to comment on the merits of the complaint by *Cicilia Wanjiru* and 56 others for the offences of obtaining monies by false pretences.

11. But I can safely state the following: It is apparent from the materials annexed to the motion that there are *several* and *distinct* complainants alleging that the applicant through his company, *Casqid Travel Agency*, obtained monies from them under false pretences. This is the foundation of the two criminal cases in the lower court that I referred to earlier.

12. It is important to emphasize that all those remain mere allegations for now. Paraphrased, under article 50 (2) of the **Constitution**, the applicant is still deemed innocent; and, is entitled to a fair trial.
13. But in light of the multiple complaints by distinct victims over different sets of facts, it would *not* be right to stop the police from investigating the matters or to bar the DPP from bringing any such charges so long as they are acting in the public interest and do not abuse their powers. I will come back to that matter.
14. Fundamentally, once the new charges are laid, it will be truly within the province of the lower court to determine whether they are suitable for *consolidation*. From the replying affidavit, the lower court has already directed that all the complaints be *consolidated* into a single file. I also note that the applicant has been granted bail and is out on bond.
15. Granted those reasons, I would be hard pressed to grant anticipatory bail or to issue a blanket order to restrain the respondents from investigating complaints against the

applicant for obtaining monies by false pretenses, or from being arrested or charged.

16. I also have no cause to doubt *SSGT Mutiso* who has deposed that the *I-Phone* will be an exhibit in the criminal cases. I thus decline to order for its release at this stage. It remains open to the applicant to make an application for its release in the lower court at the appropriate stage in the criminal trial.

17. I note that the applicant is suffering from a serious heart condition. Like I have stated, he has been granted bail and is out on bond. It may also be true that some of the complaints are exaggerated or may be commercial or civil in nature. Unfortunately, that may not necessarily bar criminal proceedings. Again, I say that carefully and without a final finding. I also find that some of the arguments by the applicant may as well form good defences in the lower court. The less I say about it the better.

18. The offices of the Inspector General of Police and the DPP have been clothed with a high level of independence. Article 245 (4) of the **Constitution** provides as follows-

*The Cabinet secretary responsible for police services may lawfully give a direction to the Inspector-General with respect to any matter of policy for the National Police Service, but no person may give a direction to the Inspector General with respect to— (a) the investigation of any particular offence or offences [Underlining added].*

19. On the other hand, under Article 157 (10) provides that the DPP “*shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority*”.

20. The only caveat to the DPP is that he must have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process. I am not persuaded from the materials before me that the DPP has abused the legal process.

21. The upshot is that the originating notice of motion dated 26<sup>th</sup> August 2025 lacks merit and is hereby *dismissed*.

It is so ordered.

**DATED, SIGNED** and **DELIVERED** at **NAIROBI** this 11<sup>th</sup> day of December 2025.

**KANYI KIMONDO**  
**JUDGE**

**Ruling read virtually on Microsoft Teams in the presence of-**

Ms. Kigira holding brief for Ms. Awino for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. Edwin Ombuna, Court Assistant.

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